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Oceans and the law of the sea

Consultative Group on Flag State Implementation

Report of the Secretary-General**

Summary

The present report is the product of the Consultative Group on Flag State Implementation, an inter-agency task force formed by the Secretary-General in response to calls for an investigation into the causes of the failure of some vessels to conform to international requirements regarding ship safety, labour conditions, fisheries conservation and protection of the marine environment. The Group, comprising the International Maritime Organization, the International Labour Organization, the Food and Agriculture Organization of the United Nations, the United Nations Environment Programme, the United Nations Conference on Trade and Development, the Organization for Economic Cooperation and Development and the United Nations, met in May 2003 to discuss the issues and each agreed to contribute chapters of the present report, outlining studies undertaken and measures adopted to address flag State implementation of international obligations. The report includes tables setting out flag State obligations in the United Nations Convention on the Law of the Sea, the United Nations Fish Stocks Agreement and a broad range of other international instruments. Its publication as a General Assembly document responds to a recommendation by the fourth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea and to the request of the General Assembly for a comprehensive elaboration of the duties and obligations of flag States.

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* A/59/50 and Corr.1.

** The present report was submitted after the established deadline in order to reflect the final comments from other organizations which were received at a later date.

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I. Introduction

1. Since the establishment of the United Nations in 1945, a number of organizations, agencies and programmes of the United Nations system have adopted an impressive array of legislation dealing with all aspects of the law of the sea, including navigation, international fishing, ship safety, the prevention of pollution from ships, the welfare of seafarers, etc. All this legislation is based upon the basic principles of freedom of navigation and the responsibility of States for all matters concerning ships having their nationality (that is, flag States have the primary responsibility for ensuring that their ships conform to the relevant requirements as laid down in international instruments).

2. Unfortunately, from high-profile oil tanker accidents, most notably those involving the *Erika* in December 1999 and the *Prestige* in November 2002, from issues raised in relation to vessels involved in illegal, unreported and unregulated (IUU) fishing and from the unsatisfactory working conditions experienced by seafarers on certain vessels, general concerns have been raised that some flag States are not fulfilling their international obligations under the United Nations Convention on the Law of the Sea (UNCLOS) and other international instruments. For example, despite the publicity given to accidents, every year unscrupulous shipowners release more oil illegally into the marine environment from routine operations than all the accidental oil spills combined.[1]

3. Due to the persistence of these problems, the international community in the past few years, has come to realize that improved implementation and enforcement by States of their responsibilities under international law is urgent and essential to maritime safety, protection of marine environment, the welfare of seafarers and sustainable marine resource management.

4. These points were made in a letter dated 22 November 2002 from Greenpeace International, the International Transport Workers' Federation and the World Wide Fund for Nature addressed to the Secretary-General of the United Nations (see annex I to the present report). The authors requested the Secretary-General to play a leadership role by convening a special inter-agency task force to address collectively what they considered to be the root cause of the problem: ship registration, the lack of a "genuine link" between a ship and the State of registration, and the lack of adequate implementation and enforcement by certain flag States. After consultation with the relevant international organizations, the Secretary-General decided to establish a consultative group to exchange information on research conducted and views on measures that had been already undertaken.

5. Consequently, the Division for Ocean Affairs and the Law of the Sea of the United Nations Office of Legal Affairs was requested by the Secretary-General to establish the Consultative Group on Flag State Implementation. Terms of reference were drawn up in consultation with the following agencies, conference and programmes which were invited to become members of the Group: International Maritime Organization (IMO), Food and Agriculture Organization of the United Nations (FAO), International Labour Organization (ILO), United Nations Conference on Trade and Development (UNCTAD), United Nations Environment Programme (UNEP) and Organization for Economic Cooperation and Development (OECD).

6. The object of the Consultative Group was to conduct a thorough investigation into all aspects — political, legal, economic and social — of the issues raised by the lack of flag State control over their vessels, in contravention of international rules and standards. This investigation was to make use of the competencies and expertise offered by agencies and international organizations involved in shipping, trade, environment and the safety of navigation. It was intended to lead to practical conclusions that would not prejudice in any way the mandates of the participating agencies.

7. The Group's areas of focus were:

(a) The ship itself, its owner, its operator, its crew;

(b) The flag State, including criteria for registration, degree of control exercised over vessels;

(c) Port State control;

(d) Coastal States and jurisdiction for the protection of the marine environment;

(e) The role of international organizations.

8. The Consultative Group met at OECD headquarters in Paris on 7 May 2003 (see annex II to the present report). The discussions focused on the areas of competence of each organization in relation to the common issue of flag State implementation. The organizations were to exchange papers on initiatives and measures taken thus far and to be taken in the future, with a preliminary report issued by the Division for Ocean Affairs and the Law of the Sea to the participants, to be followed by a final report to be submitted to the Secretary-General.

9. At its fourth meeting in June 2003, the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea began a serious consideration of the problems of flag State implementation. In order to further the discussion, the meeting requested that the report of the Consultative Group be submitted to its fifth session.

10. In its resolution 58/240 on oceans and the law of the sea, the General Assembly requested the Secretary-General, in cooperation and consultation with relevant agencies, organizations and programmes of the United Nations system, to prepare and disseminate to States a comprehensive elaboration of the duties and obligations of flag States, including the potential consequences for non-compliance prescribed in the relevant international instruments. The present report responds to both those requests, as the submissions by the members of the Group collectively contain a comprehensive elaboration of the duties and obligations of flag States.

II. Reports from Consultative Group participants

A. International Maritime Organization

The International Maritime Organization and the strengthening of flag State jurisdiction in the implementation by ships of safety and anti-pollution measures

Prepared by the IMO Secretariat

11. The recent *Prestige* oil spill in European waters has rekindled political interest in the transport of oil and has led to a number of substantive safety and environmental initiatives by IMO member States for reducing the risks of accidents as well as their environmental impact on the oceans, on local communities, on tourism and on fishing industries. The safety record of the oil transport industry with respect to seaborne trade has improved significantly in the past decade as a result of the instruments and treaties which have been adopted by IMO and the recognition by the major players in the industry of their responsibilities. However, the impact of a single major oil spill can have devastating effects. The membership of IMO has therefore taken a very strong position with regard to further reducing the risks and promoting clear accountability of flag States. Its work programme for achieving these objectives is ambitious.

12. At the inter-agency meeting it was agreed that each participating organization would provide the Division for Ocean Affairs and the Law of the Sea with a paper summarizing the work performed by each organization in connection with the implementation by flag States of duties in accordance with article 94 of UNCLOS. The role of IMO in this regard should be seen as pre-eminent: IMO has an exclusive mandate to adopt safety and anti-pollution regulations applicable on board ships. Most IMO technical rules are self-executing; as such they have been written to implement directly the framework principles of safety and prevention of marine pollution contained in UNCLOS.

13. The present paper summarizes the main features of the mandate of IMO in accordance with UNCLOS and, as agreed at the Paris meeting, a summary of the main activities undertaken to enhance the efficiency of flag State implementation. It also includes reference to cooperation between IMO and other organizations within the United Nations system.

1. Implementation through IMO rules of the flag State's duties as prescribed by UNCLOS

14. Since 1959, IMO, the sole United Nations specialized agency exclusively devoted to maritime affairs, has been elaborating comprehensive multilateral treaties imposing primarily upon the flag State a wide range of technical measures designed to improve the safety of shipping and enhance the prevention of marine pollution from vessels. It should also be noted that measures of port State control are also regulated in IMO treaties aimed at preventing and correcting deficiencies in the exercise of flag State jurisdiction.

15. The most important IMO treaties are implemented worldwide by States representing together between 95 and 99 per cent of the world's merchant fleet tonnage.

16. Beginning in 1973, the Secretariat of IMO (then IMCO) actively contributed to the work of the Third United Nations Conference on the Law of the Sea in order to ensure that the elaboration of IMO instruments conformed with the basic principles guiding the elaboration of the future Convention. Although IMO is explicitly mentioned in only one of the articles of UNCLOS (article 2 of annex VIII), several provisions in the Convention refer to the adoption by the "competent international organization" of international shipping rules and standards in matters concerning maritime safety, efficiency of navigation and the prevention and control of marine pollution from vessels and by dumping.

17. The articles and provisions of the Convention which are of particular relevance in this context include the following:

- Article 21(2), which refers to the "generally accepted international rules or standards" on the "design, construction, manning or equipment" of ships in the context of laws relating to innocent passage through the territorial sea; article 211(6)(c), which refers to the "generally accepted international rules and standards" in the context of pollution from vessels; articles 217(1) and (2), which refer to the "applicable international rules and standards" in the context of flag State enforcement; and article 94(3), (4) and (5), which requires flag States to conform to the "generally accepted international regulations, procedures and practices" governing, inter alia, the construction, equipment and seaworthiness of ships, as well as the manning of ships and the training of crews, taking into account "applicable international instruments";
- Articles 21(4), 39(2), and by extension article 54, which refer to "generally accepted international regulations" in the context of the prevention of collisions at sea;
- Articles 22(3)(a), 41(4) and 53(9), which refer to the "recommendations [or proposals] of the competent international organization" (IMO) in the context of the designation of sea lanes, the prescription of traffic separation schemes and their substitution;
- Article 23, which refers to the requirements in respect of documentation and special precautionary measures established by international agreements for foreign nuclear-powered ships and ships carrying nuclear or inherently dangerous or noxious substances;
- Article 60, and by extension article 80, refers to the "generally accepted international standards established ... by the competent international organization" (IMO) for the removal of abandoned or disused installations or structures to ensure safety of navigation (para. 3); the "applicable international standards" for the determination of the breadth of the safety zones; the "generally accepted standards or recommendations" of the "competent international organization" (IMO) where the breadth exceeds a distance of 500 metres (para. 5); and the "generally accepted international standards" regarding navigation in the vicinity of artificial islands, installations, structures and safety zones (para. 6);

- Article 94(3), (4), and (5), which regulates the duties of flag States, article 39(2), which concerns the duties of ships in transit passage, and by extension article 54, refer to the "generally accepted international regulations, procedures and practices" for safety at sea and for the prevention, reduction and control of pollution from ships;
- Articles 210(4) and (6) refer to the "global rules, standards, and recommended practices and procedures" for the prevention, reduction and control of pollution by dumping; and article 216(1) refers to the enforcement of such "applicable international rules and standards established through competent international organizations or diplomatic conference";
- Article 211 refers to the "international rules and standards" established by "States acting through the competent international organization" (para. 1) and "generally accepted international rules and standards established through the competent international organization" (paras. 2 and 5) for the prevention, reduction and control of pollution of the marine environment from vessels; while articles 217(1) and (2), article 218(1) and (3), and article 220(1), (2) and (3), dealing with enforcement of anti-pollution rules, refer to the "applicable international rules and standards". Articles 217(3) and 226(1) refer to the certificates (records and other documents) required by international rules and standards in the context of pollution control;
- Article 211(6)(a), regarding pollution from vessels, refers to such "international rules and standards or navigational practices as are made applicable, through the [competent international] organization [IMO], for special areas";
- Article 211(7) requires such "international rules and standards" to include, inter alia, those relating to prompt notification to coastal States, whose coastline or related interests may be affected by incidents, including maritime casualties, which involve discharges, or probability of discharges;
- Articles 219 and 226(1)(c) refer to "applicable international rules and standards" relating to seaworthiness of vessels, while article 94(5) refers to "generally accepted international regulations, procedures and practices" governing seaworthiness of ships.

18. The basic obligations imposed upon the flag State are contained in article 94 of UNCLOS, which requires flag States to take measures to ensure safety at sea which conform to "generally accepted international regulations, procedures and practices" (article 94(3), (4) and (5)). Several IMO safety instruments include provisions which also aim at preventing and controlling pollution hazards posed by maritime accidents involving ships. In these provisions the management of safety and pollution risks are interconnected. Other IMO instruments exclusively regulate anti-pollution measures, irrespective of whether the introduction of polluting substances into the sea is the result of an accident involving a ship or from the operational discharges from vessels. Those instruments have proved to be an effective vehicle for the implementation of article 217 of UNCLOS, which provides for the basic obligations imposed upon the flag State to ensure compliance by its vessels with applicable international rules and standards established through the competent international organization or general diplomatic conference.

19. The most significant and widely accepted IMO safety and anti-pollution treaties providing for measures to ensure the effective implementation of UNCLOS safety and anti-pollution shipping obligations are the following:

- International Convention for the Safety of Life at Sea, 1974 (SOLAS 74) and Protocols of 1978 and 1988 relating thereto;
- International Convention on Load Lines, 1966 (LOAD LINES 1966) and Protocol of 1988 relating thereto;
- International Convention on Tonnage Measurement of Ships, 1969 (TONNAGE 1969);
- Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG 1972);
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 1978);
- International Convention on Maritime Search and Rescue (SAR 1979);
- International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 related thereto (MARPOL 73/78);
- International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 (AFS) (not yet in force).

20. These treaty law instruments have been complemented with important resolutions adopted by the IMO Assembly. Resolution A.847(20) on guidelines to assist flag States in the implementation of IMO instruments provides flag States with a means to establish and maintain measures for the effective application and enforcement of the following IMO Conventions: SOLAS 1974, MARPOL 73/78, LOAD LINES 1966, and STCW 1978. A subsequent IMO Assembly resolution A.912(22), which supersedes and revokes resolution A.881(21), provides guidance to assist flag States in the self-assessment of their performance; and Assembly resolution A.914(22) provides guidance on measures to further strengthen flag State implementation. Enforcement of IMO safety and anti-pollution provisions has been strengthened by the incorporation into SOLAS of the International Safety Management (ISM) Code, under which companies operating ships are subject to a safety management system under the control of the administration of the flag State.

Work of IMO on strengthening flag State jurisdiction in the implementation of IMO Conventions

21. As a result of the worldwide implementation of IMO regulations, the casualty rate for all types of merchant ships has plummeted over successive decades. In terms of average annual loss rates per million flight, or voyage, hours at risk, the loss rate for commercial aircraft is three times that for merchant ships, and since 1988, the merchant ship loss rate per 1,000 units at risk has been consistently lower than the rate for commercial aircraft.

22. The response of IMO to serious accidents has been swift and decisive, and its current proactive policy has created a regulatory infrastructure that covers everything from measures designed to prevent casualties and accidents and minimize damage to the environment, through measures aimed at ensuring an effective response when accidents do happen, to those activities which have created

the compensation regime which ensures that the innocent victims of pollution and other mishaps receive adequate recompense.

23. IMO's Subcommittee on Flag State Implementation (FSI) was set up in 1992 following the recognition by the Maritime Safety Committee (MSC) and the Marine Environment Protection Committee (MEPC) of the urgent need to improve maritime safety and the prevention of marine pollution through stricter and more uniform application of existing regulations, in the wake of accidents such as *Herald of Free Enterprise*, *Scandinavian Star*, *Doña Paz* and *Exxon Valdez*. Incidents such as the *Erika* and the *Prestige* have reinforced the importance of the Subcommittee's activities. Its primary objective is the identification of measures necessary to ensure effective and consistent global implementation of IMO regulations, including the consideration of special difficulties faced by developing countries. There was agreement that the effectiveness of IMO safety and pollution prevention instruments depends primarily on the application and enforcement of their requirements by the States parties and that many have experienced difficulties in complying fully with the provisions of the instruments.

24. To meet its primary objective, the Subcommittee was assigned the following terms of reference:

- To identify the range of flag State obligations emanating from the IMO treaty instruments;
- To assess the current level of implementation of instruments by flag States;
- To identify those areas where flag States have difficulty in fully implementing IMO instruments;
- To assess problems in the involvement of the States party to the IMO instruments in their capacity as port States, coastal States and countries training and certifying officers and crews;
- To make proposals to assist parties in implementing and complying with IMO treaty instruments, such proposals to be implemented by States or by the organization; and to monitor the performance of actions taken.

25. Since its creation, the Subcommittee has progressively discharged its mandate and produced important guidelines and recommendations. Some have been adopted as resolutions by the IMO Assembly, MSC and MEPC, others have taken the form of circulars. The Assembly resolutions adopted as a result of the work of the FSI Subcommittee include:

- A.739(18) on Guidelines for the authorization of organizations acting on behalf of the Administration
- A.740(18) on Interim guidelines to assist flag States
- A.741(18) on an International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code)
- A.742(18) on Procedures for the control of operational requirements related to the safety of ships and pollution prevention
- A.787(19) on Procedures for port State control

- A.788(19) on Guidelines on Implementation of the International Safety Management (ISM) Code by Administrations
- A.789(19) on Specifications on the survey and certification functions of recognized organizations acting on behalf of the Administration
- A.847(20) on Guidelines to assist flag States in the implementation of IMO instruments
- A.848(20) on Implementation of the International Safety Management (ISM) Code
- A.849(20) on a Code for the investigation of marine casualties and incidents
- A.881(21) on Self-assessment of flag State performance
- A.882(21) on Amendments to the Procedures for Port State Control (resolution A.787(19))
- A.884(21) on Amendments to the Code for the investigation of marine casualties and incidents (resolution A.849(20))
- 912(22) on Self-assessment of flag State performance
- 914(22) on Measures to further strengthen flag State implementation

26. As a result of the work of the FSI Subcommittee, MSC adopted the following resolutions:

- MSC.83(70) on Amendments to the Survey Guidelines under the harmonized system of survey and certification (resolution A.746(18)), concerning testing and servicing of 406 MHz EPIRBs and survey of emergency towing arrangements
- MSC.84(70) on Amendments to the Guidelines on surveys required by the 1978 SOLAS Protocol, the International Bulk Chemical Code and the International Gas Carrier Code (resolution A.560(14)), concerning the survey of emergency towing arrangements

27. MSC and MEPC circulars produced as a result of the FSI Subcommittee's work include the following:

- MSC/Circ.620 on Amendments to resolution A.466(XII) on Procedures for the control of ships
- MSC/Circ.630 on Procedures for the control of ships — Information on available inspection services
- MSC/Circ.710-MEPC/Circ.307 on Model agreement for the authorization of organizations acting on behalf of the Administration
- MSC/Circ.753 on Report on fishing vessels and fishermen statistics
- MSC/Circ.772-MEPC/Circ.319 on Guidelines for the development and approval of reporting requirements in non-mandatory instruments and reports
- MSC/Circ.788 on Authorization of recognized organizations acting on behalf of Administrations

- MEPC/Circ.325-MSC/Circ.802 on Provision of preliminary information on serious and very serious casualties by MEPC/Circ.332 rescue coordination centres
- MSC/Circ.953-MEPC/Circ.372 on Reports on marine casualties and incidents — Revised harmonized reporting procedures — Reports required under SOLAS regulation I/21 and MARPOL 73/78 articles 8 and 12
- MSC/Circ.889-MEPC/Circ. on Self-assessment of flag State performance
- MSC/Circ.890-MEPC/Circ.354 on Interim guidelines for port State control related to the ISM Code
- MSC/Circ.1052-MEPC.6/Circ.8 on National contact points for safety and pollution prevention
- MSC/Circ.954-MEPC/Circ.373 on Self-assessment of flag State performance: criteria and performance indicators
- MSC/Circ.955 on Servicing of life-saving appliances and radiocommunication equipment under the harmonized system of survey and certification (HSSC)
- MSC/Circ.956 on Guidelines for unscheduled inspections of ro-ro passenger ships by flag States
- MSC/Circ.1010-MEPC/Circ.382 on Communication of information on the authorization of recognized organizations (ROs)
- MSC/Circ.1011-MEPC/Circ.383 on Measures to improve port State control procedures with a view to establishing a mechanism for a constructive and timely dialogue between flag States and port States on port State control interventions through improved channels of communication between port States and flag States
- MSC/Circ.1058-MEPC/Circ.400 on Interim Guidelines to assist flag States and other substantially interested States to establish and maintain an effective framework for consultation and cooperation in marine casualty investigations

28. The FSI Subcommittee has produced the following circulars:

- FSI/Circ.1 on Baseline assessment questionnaire
- FSI/Circ.2 on Questionnaire on current practices for the training and qualifications of port State control officers
- FSI/Circ.10 on List of non-governmental organizations authorized to carry out surveys and issue certificates on behalf of Administrations
- FSI.2 circular series on Port State control detentions and flag State comments
- FSI.3 and FSI.4 circular series on casualties to merchant ships and fishing vessels

2. Major initiative to create the IMO model audit scheme

29. At its eighty-eighth session, the IMO Council considered a proposal for the development of an IMO model audit scheme to be implemented on a voluntary basis and approved, in principle, the concept for such a scheme. It further requested the Secretary-General to study the International Civil Aviation Organization (ICAO)

Model Audit Scheme and advise the Council, the Maritime Safety Committee, the Marine Environment Protection Committee and the Technical Cooperation Committee (TCC) on any aspects of that scheme which might be taken into account in developing the IMO scheme. The objective of the scheme would be to enhance the performance of member States in implementing appropriate IMO Conventions relating to maritime safety and the prevention of marine pollution.

30. The ICAO universal safety oversight audit programme was chosen as an example because it provides a structured and well-defined process for the audit of sovereign States which have collectively established the mandate and objectives of the programme. The ICAO audit programme contains a number of detailed procedures and requirements which will be considered in the development of an IMO model audit scheme.

31. In November 2002, the IMO Council considered the requested reports of the Secretary-General describing the study of the ICAO universal safety oversight audit programme and containing suggestions and recommendations based thereon. During its deliberations on the issue, the Council also considered the outcome of the discussions at the forty-eighth session of the Marine Environment Protection Committee (MEPC 48), which had endorsed the establishment of a joint MSC/MEPC/TCC working group on the voluntary IMO model audit scheme to be held during MSC 77 and had identified relevant documents containing environmentally critical areas to be taken into account by the working group. The joint working group on the model audit scheme was convened during MSC 77 with the terms of reference as approved by the Council.

32. The Committee endorsed the working group's view that the enactment of appropriate legislation, its implementation and enforcement were the three key issues on the basis of which a member State's performance could be measured with respect to its treaty obligations and the overall aim and 10 supporting objectives of the audit scheme. These objectives included compliance with the Code for the implementation of [mandatory] IMO instruments; enactment, administration and enforcement of laws and regulations; delegation of authority; control and monitoring of the execution of statutory responsibilities; the discharge of other obligations and responsibilities by a member State; capacity-building and technical assistance; and the provision of appropriate feedback to the audited member State, the organization's membership at large and into the work of the organization.

33. Subsequently, the IMO Council approved the principles of the Voluntary IMO Member State Audit Scheme and decided that the Scheme should be developed in such a manner as not to exclude the possibility in the future of it being made mandatory. The decision was endorsed by the IMO Assembly in its resolution A.946(23).

Claims by seafarers

34. As a result of the work of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers, two important resolutions/guidelines were adopted by the IMO Assembly in November 2001.

35. Resolution A.930(22) on Guidelines on Provision of Financial Security in Cases of Abandonment of Seafarers states that abandonment of seafarers is a serious

problem involving a human and social dimension and recognizes that, given the global nature of the shipping industry, seafarers need special protection. In that context, the resolution notes that the adoption of guidelines is an appropriate interim measure to ensure provision of financial security in case of abandonment of seafarers. The resolution recommends measures to be implemented by shipowners to ensure the provision of an adequate financial security system for seafarers in case of abandonment and includes associated guidelines which set out the main features and scope of coverage of the financial security system and also contain recommendations for the certification of such systems.

36. Resolution A.931(22) on Guidelines on Shipowners' Responsibilities in respect of Contractual Claims for Personal Injury to or Death of Seafarers notes a need to recommend minimum international standards for the responsibilities of shipowners in respect of contractual claims in such cases. It expresses the concern that, if shipowners do not have effective insurance coverage or other form of financial security, seafarers are unlikely to obtain full and prompt compensation. It states that putting in place effective arrangements for the payment of compensation is part of the shipowners' responsibilities to provide safe and decent working conditions. The resolution includes associated guidelines recommending measures to be implemented, including certification and a model receipt and release form for claims.

37. The implementation of these resolutions is currently subject to assessment by the Joint Group, which meets every year and produces recommendations to both ILO and IMO governing bodies.

4. Conclusions

38. In becoming party to IMO treaties flag States assume the primary responsibility for the effective enforcement of international safety and environmental shipping standards. It is also through the operation of IMO treaties that port State control measures can be enforced worldwide as a corrective remedy for non-compliance with those standards. It is currently beyond the scope of the mandate of IMO to participate in that enforcement activity. The organization lacks both the resources and, more important, the mandate to do so.

39. In view of this reality, further involvement of IMO in the achievement of substantive improvements in the strengthening of flag State jurisdiction necessarily depends upon the possibility of its being given the authority to verify that flag States really do implement conventions and other instruments fully and properly. The so-called "White List" of parties to the revised STCW Convention that are deemed to be giving full effect to its provisions is a case in point. Other Conventions should have a similar "performance clause". There should be a provision for sanctions and penalties which may be applied if convention requirements are not adhered to. Hence the importance of an audit scheme whereby flag State performance can be properly monitored by IMO. A requirement should be introduced that all accident investigation reports must be submitted to IMO with all possible speed, and not just at the discretion of the flag State concerned.

B. Food and Agriculture Organization of the United Nations

Work undertaken in the Food and Agriculture Organization of the United Nations related to flag State implementation

Prepared by the FAO Secretariat

40. The work undertaken in FAO in the area of flag State implementation focuses on fishing vessels and their operation. The main thrust of this work concerns the promotion of responsible fishing practices both in waters under national jurisdiction and on the high seas. Some work has also been done in related areas, including standards for the construction and survey of fishing vessels and for the safety at sea for fishers.

I. National instruments related to fisheries developed under the auspices of FAO[2]

1. 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (1993 FAO Compliance Agreement)

41. The FAO Committee on Fisheries (COFI), at its nineteenth session, in March 1991, recommended the development of new approaches to fisheries management which would embrace conservation, environmental, social and economic considerations. Following the 1992 United Nations Conference on Environment and Development and the 1992 Cancún International Conference on Responsible Fishing, FAO embarked on the process which resulted, inter alia, in the Code of Conduct for Responsible Fisheries. In this process, at the twentieth session of COFI, held in March 1993, FAO was requested to prepare on a "fast track" basis, as part of the Code, proposals to prevent reflagging of fishing vessels which affected conservation and management measures on the high seas. This resulted in the adoption by the FAO Conference, at its twenty-seventh session in November 1993, of the FAO Compliance Agreement, which is an integral part of the Code of Conduct.[3]

42. The primary objective of the FAO Compliance Agreement is to deal with the problem of the reflagging of fishing vessels as a means of avoiding compliance with agreed conservation and management measures. Broadly speaking, it applies to fishing vessels that are used for fishing on the high seas[4] and entered into force on 24 April 2003.

43. The FAO Compliance Agreement sets out in more detail than does the 1982 United Nations Convention the responsibilities of the flag State.[5] While the 1982 United Nations Convention simply provides that States have a duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas, the FAO Compliance Agreement requires States to take measures to ensure that fishing vessels entitled to fly their flag do not engage in any activity that undermines the effectiveness of international conservation and management measures.[6]

44. The Compliance Agreement, for the first time, makes a connection between the right to fly a State's flag and the right to fish on the high seas. This is an important advance in flag State control as it provides a means for a State to control vessels flying its flag. Each party is required:

- To take measures to ensure that its fishing vessels do not engage in any activity that undermines the effectiveness of international conservation and management measures;[7]
- Not to allow its vessels to be used for fishing on the high seas unless authorized to do so by the appropriate authorities of the flag State;[8]
- To be satisfied that it can effectively exercise its responsibilities under the Compliance Agreement before it authorizes any fishing vessel to fish on the high seas.[9]

45. Parties are required to maintain a record of their fishing vessels authorized to be used for fishing on the high seas.[10]

46. Authorizations to fish may be subject to conditions[11] and will be deemed cancelled if a vessel is no longer entitled to fly the flag of the authorizing State.[12]

47. The freedom of vessels with a poor compliance record to reflag is limited: Parties are not to authorize any fishing vessel to be used for fishing on the high seas if it has been previously registered in the territory of:

- Another party and undermined the effectiveness of international conservation and management measures; or
- A non-party if there is sufficient information as to why the authorization to fish was suspended or withdrawn.

48. However, this would not apply if the ownership of the vessel changed and the new owner has provided sufficient evidence that the previous owner has no further legal, beneficial or financial interest in, or control of, the fishing vessel. Parties are to authorize these "non-compliant" vessels to fish only if they are satisfied that the vessels will not undermine the object and purpose of the Compliance Agreement.[13]

49. These provisions are bolstered by requirements on monitoring, control and surveillance. Parties must ensure that their flag vessels comply with vessel marking standards[14] and provide information that allows the party to fulfil its obligations under the Compliance Agreement.[15] Parties are required to take enforcement measures against vessels that contravene the Agreement, including establishing offences under national legislation and imposing sanctions to enforce compliance.[16] Sanctions should deprive offenders of the benefits accruing from their illegal activities and may result in the refusal, suspension or withdrawal of the authorization to fish on the high seas.[17]

50. Flag State control measures are overlaid by the requirement that parties work together to take proactive measures to exchange information, monitor and allow for the taking of investigatory measures with respect to vessels flying the flag of other Parties.[18] FAO plays a significant role in the collection and exchange of information, including the establishment of a database of vessels authorized to fish on the high seas which will facilitate vessel monitoring and assist in tracking the reflagging of vessels.[19]

51. The FAO Compliance Agreement also encourages the strengthening of international cooperation on a global, regional, subregional or bilateral basis and increased transparency through the exchange of information on high seas fishing.[20]

52. Notably, the criterion of a "genuine link" referred to in article 91 of the 1982 United Nations Convention, in the high seas fishing context, is not given any content. The "link" mentioned in article III.3 of the FAO Compliance Agreement refers to the ability of a State to exercise effective control in respect of its vessels. The Agreement leaves it up to the parties to determine what kind of link vessels ought to have to the flag State and then to set this out in legislation.

Papers, studies and reports on the 1993 FAO Compliance Agreement

- "Flag State responsibility and the contribution of recently concluded international instruments in preventing, deterring and eliminating illegal, unreported and unregulated (IUU) fishing", by Annick Van Houtte (Legal Office, FAO), FAO Informal Consultation on Flag States Operating Open Registries for Fishing Vessels and their Impact on Illegal, Unreported and Unregulated Fishing, 23-25 September 2003, Miami, Florida, United States of America
- "Legislating for Sustainable Fisheries — A Guide to Implementing the 1993 FAO Compliance Agreement and 1995 UN Fish Stocks Agreement", by William Edeson (Senior Legal Officer, FAO), David Freestone (Chief Counsel, The World Bank) and Elly Gudmunsdottir (Counsel, The World Bank). The World Bank, 2001
- "The FAO Compliance Agreement", by Gerald Moore (Former Legal Counsel, FAO), published in *Current Fisheries Issues and the Food and Agriculture Organization of the United Nations*, edited by Myron H. Nordquist and John Norton Moore, Center for Oceans Law and Policy, 2000
- "Making the New Rules Work: Implementation of the Global Fisheries Instruments", by David Balton (Director, Office of Marine Conservation, United States Department of State), published in *Current Fisheries Issues* ... (see above)
- "Implementing the 1982 UN Convention, the FAO Compliance Agreement and the UN Fish Stocks Agreement", by William Edeson (Legal Office, FAO), published in *Current Fisheries Issues* ... (see above)
- "Implementing the Law of the Sea Convention, the FAO Compliance Agreement and the UN Fish Stocks Agreement: A View from the World Bank", by David Freestone (Chief Counsel, The World Bank) published in *Current Fisheries Issues* ... (see above)
- COFI — Report of the twentieth session of the Committee on Fisheries, Rome, 15-19 March 1993. FAO Fisheries Report No. 488
- "Technical Consultation on High Seas Fishing", Rome, 7-15 September 1992. FAO Fisheries Report No. 484 (Suppl.)
- "Report of the 102nd session of the FAO Council", Rome, 9-20 November 1992. Report No. FAO-GIC--CL/102/REP

2. The 1995 Code of Conduct for Responsible Fisheries

53. The Code of Conduct was unanimously adopted by the FAO Conference on 31 October 1995.[21] It provides a framework for national and international efforts to promote the responsible exploitation of aquatic living resources in harmony with the environment.[22]

54. The Code is global in scope; it covers all fishing activities both within and beyond zones of national jurisdiction and, as such, is broader than the FAO Compliance Agreement and the United Nations Fish Stocks Agreement. It embraces a wide range of subjects leading to better conservation and management of fisheries, including the gross overcapacity of the global fishing fleet, the inadequate control of vessels by flag States, the inadequate provision of fishery data to both flag States and coastal States, and trade restrictions intended to achieve environmental protection.

55. Although voluntary, the Code of Conduct applies to all States and entities and to all fishers. Since its adoption in 1995, it has influenced countries to modify their fisheries laws to facilitate the Code's implementation.[23]

56. The objectives of the Code are to establish principles and criteria for national and international legal and institutional arrangements and to provide standards of conduct for persons involved in the fishery sector. FAO has prepared and will prepare, as the need arises, technical guidelines to support the implementation of the Code.

57. Flag States have similar roles under the Code as they do under other international instruments. Despite the heavy focus originally accorded to the reflagging problem in the call for the development of the Code, it does not deal solely and directly with this issue. The Code does however deal with the issue of flag State duties and, in its "General Principles", it urges States to exercise effective flag State control in order to ensure the proper application of the Code. Flag States should ensure that fishing vessels entitled to fly their flag do not fish on the high seas or under the jurisdiction of other States unless they have obtained both a Certificate of Registry and an authorization to fish.[24]

58. A framework for vessel monitoring, control and surveillance requirements is provided in the Code: Flag States should maintain records of these fishing vessels, indicating details of the vessels, their ownership and the authorization to fish.[25] Fishing vessels and their fishing gear should be marked in accordance with an internationally recognizable marking system[26] and in accordance with national legislation.

59. The Code encourages States to accept the FAO Compliance Agreement and to adopt laws and regulations to implement it.[27]

60. Flag States may enforce compliance by vessels flying their flag through national legislation and through the imposition of sanctions which may deprive offenders of the benefits accruing from their illegal activities and may result, for serious violations, in the refusal, suspension or withdrawal of the authorization to fish.[28]

61. The Code also urges flag States to ensure protection of their vessels and the crews thereof through compliance with internationally accepted safety standards, or the adoption of appropriate safety requirements where vessels are not covered by

such standards.[29] It encourages access to insurance coverage by owners and charterers of fishing vessels sufficient to protect the crew and their interests, indemnify third parties and protect their own interests.[30] Flag States should ensure that crew members are entitled to repatriation.[31]

62. An indirect reference to the reflagging problem can be found in article 7.8.1, providing that "without prejudice to relevant international agreements, States should encourage banks and financial institutions not to require, as a condition of a loan or mortgage, fishing vessels or fishing support vessels to be flagged in a jurisdiction other than that of the State of beneficial ownership where such a requirement would have the effect of increasing the likelihood of non-compliance with international conservation and management measures".

Papers, studies and reports on the Code of Conduct

- "Closing the gap: the role of 'soft' international instruments to control fishing", by William Edeson (Legal Office, FAO), published in *Australian yearbook of international law*, vol. 20 (1999)
- Rome Declaration on the Implementation of the Code of Conduct for Responsible Fisheries, adopted by the FAO Ministerial Meeting on Fisheries, Rome, 10 and 11 March 1999
- "Food and Agriculture Organization of the UN (FAO)--Code of Conduct for Responsible Fisheries", by William Edeson (Legal Office, FAO) published in *International journal of marine and coastal law* 11:233-238 (1996)
- COFI — Report of the twenty-first session of the Committee on Fisheries, Rome, 10-13 March 1995. FAO Fisheries Report No. 524
- Administrative report of the Technical Consultation on the Code of Conduct for Responsible Fisheries, Rome, 26 September-5 October 1994. FAO Fisheries Report No. 515
- Report of the Expert Consultation on the Code of Conduct for Responsible Fishing — Fishing Operations, Sidney, British Columbia, Canada, 6-11 June 1994. FAO Fisheries Report No. 506
- COFI — Report of the twentieth session of the Committee on Fisheries, Rome 15-19 March 1993. FAO Fisheries Report No. 488
- COFI — Report of the nineteenth session of the Committee on Fisheries, Rome, 8-12 April 1991. FAO Fisheries Report No. 459

3. The International Plans of Action (IPOAs)

63. There have been four IPOAs "elaborated within the framework of the FAO Code of Conduct for Responsible Fisheries as envisaged by article 2 (d)" (IPOA-IUU, art. 4). The two concerning sharks and seabirds are very specific in focus, while the others contain provisions relevant to flag State responsibilities. The International Plan of Action for the Management of Fishing Capacity was adopted by COFI at its twenty-third session in February 1999, and endorsed by the FAO Council in June 1999, while the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) was adopted by the FAO Council in June 2001. As with the Code of Conduct, these instruments are

voluntary in nature in the sense that they are not intended to create legally binding obligations on States.

64. IPOA-Capacity includes in its section III (International considerations) a number of provisions on the duties of flag States, among them a call on States to "recognize the need to deal with the problem of those States which do not fulfil their responsibilities under international law as flag States with respect to their fishing vessels, and in particular those which do not exercise effectively their jurisdiction and control over their vessels which may operate in a manner that contravenes or undermines the relevant rules of international law and international conservation and management measures".[32]

65. Adopted by the COFI at its twenty-fourth session in March 2001,[33] the IPOA-IUU is the most recent international instrument concluded in response to the growing concern about the state of the world's fish stocks. IPOA-IUU refers to the ineffectiveness of existing international instruments addressing IUU fishing due to lack of political will, priority, capacity and resources to ratify or accede to and implement them.[34]

66. IPOA-IUU is a voluntary instrument elaborated within the framework of the FAO Code of Conduct, and technical guidelines have been prepared for its implementation.[35] However, some of its provisions reflect obligations which many States have accepted as binding, either through global instruments or in regional fisheries management organizations (RFMOs). The Code applies to the interpretation and application of IPOA-IUU and its relationship with other international instruments.[36] IPOA-IUU responds to fisheries-specific issues and nothing in it prejudices the positions of States in other forums.

67. IPOA-IUU serves as a checklist for flag States, a comprehensive "toolbox" providing the options for dealing with IUU fishing for a range of situations. In turn, it is anticipated that this checklist should be useful as part of the biennial reporting process by States and RFMOs required by IPOA-IUU.[37] For example, States and RFMOs may report whether and how they have successfully implemented certain items on the checklist, and why they may have decided that other items, or "tools", were not appropriate.

68. The objective of the IPOA is to prevent, deter and eliminate IUU fishing by providing all States with comprehensive, effective and transparent measures by which to act, including through appropriate regional fisheries management organizations established in accordance with international law.[38]

69. Measures to prevent, deter and eliminate IUU fishing are provided in Part IV of IPOA-IUU, including internationally agreed market-related measures, research and the role of the regional fisheries management organizations. Responsibilities are addressed to all States: flag, coastal and port States. It is significant that IPOA-IUU also provides a checklist or "toolbox" for coastal and port States of actions, within their respective jurisdictions, that would allow them to impose an obligation on the flag State. Together with requirements relating to State control over nationals,[39] this checklist opens the way for indirect checks on the flag State by other States and could be useful in the reporting process.[40]

70. Flag State responsibilities comprise a significant portion of the whole IPOA-IUU.[41] IPOA-IUU develops actions in much greater detail than is found in the 1993 FAO Compliance Agreement and the Code of Conduct, and although it in some

respects covers the same ground as the previous instruments, it spells out flag State responsibilities in greater detail and also includes novel actions, inter alia, provisions on "flag-hopping", port State control of fishing vessels and control over nationals.

71. Flag State responsibilities are divided into the following subheadings, described in subsections (a) to (c) below:

- Fishing vessel registration[42]
- Record of fishing vessels[43]
- Authorization to fish[44]

(a) Fishing vessel registration

72. Fishing vessel registration is important because it is the first step in preventing the flagging of vessels with a history of non-compliance. It also enables flag States to monitor their vessels, should they opt to do so. The overall objective of requirements for fishing vessel registration is for States to be able to ensure that fishing vessels flying their flag do not engage in — or support — IUU fishing. To achieve this, a flag State must ensure, before it registers a fishing vessel, that it can exercise its responsibilities with respect to vessels entitled to fly its flag.[45]

73. Consistent with the FAO Compliance Agreement,[46] flag States are to avoid flagging vessels with a history of non-compliance.[47] The IPOA goes further than the FAO Compliance Agreement, however, by encouraging all States involved in a chartering arrangement, including flag States and all other States that accept such an arrangement, to take measures to ensure that chartered vessels do not engage in IUU fishing.[48]

74. Reflagging and "flag-hopping" are serious problems. Flag-hopping is the practice of repeated and rapid changes of a vessel's flag for the purposes of circumventing conservation and management measures or provisions adopted at the national, regional or global level or of facilitating non-compliance with such measures or provisions.[49] Reflagging and flag-hopping allow shipowners to shop around for a flag State which is unable or unwilling to assume responsibility for the vessels it flags, thereby allowing vessels to avoid compliance with conservation and management measures.[50]

75. Under IPOA-IUU, States are encouraged to deter vessels from reflagging and flag-hopping for the purposes of circumventing or non-compliance with conservation and management measures or provisions.[51] Further, actions and standards flag States adopt should be uniform to avoid creating incentives for vessel owners to reflag their vessels to other States.[52]

76. Where the functions of registering a vessel and issuing an authorization to fish are separate, problems may occur in the ability of the State to monitor the activities of its fishing vessels. It may be easier for a vessel to engage in IUU fishing and more difficult for a State to monitor such activities where a vessel can register without providing evidence of a fishing authorization.

77. States are encouraged to consider conducting these functions in a manner which ensures that each gives appropriate consideration to the other. Flag States should ensure appropriate links between the operation of their vessel registers and

the record those States keep of their fishing vessels. Where such functions are not undertaken by one agency, States should ensure sufficient cooperation and information-sharing between the agencies responsible for those functions.[53]

78. Under the IPOA flag a State is also encouraged to consider making its decision to register a fishing vessel conditional upon its being prepared to provide to the vessel an authorization to fish in waters under its jurisdiction, or on the high seas, or conditional upon an authorization to fish being issued by a coastal State to the vessel when it is under the control of that flag State.[54]

(b) Record of fishing vessels

79. Consistent with the FAO Compliance Agreement and the FAO Code of Conduct, the IPOA encourages record keeping and provides a suite of essential information which should be kept. Standard information required includes the name of the vessel, registration number, previous names and port of registry, previous flag, International Radio Call Sign, name and address of owner(s), where and when built, type of vessel, name and address of the operator(s), type of fishing method(s), dimensions of the vessel, renames, addresses and nationalities of the natural or legal persons in whose name the vessel is registered, who is responsible for managing the operations of the vessel, and who is the beneficial owner(s).[55]

80. In addition to this information, and in promoting the objectives of preventing vessels from reflagging, IPOA-IUU also requires the name and ownership history of the vessel, including the history of non-compliance and a picture of the vessel.[56] This information will assist a flag State in monitoring vessels entitled to fly its flag and may make it more difficult for vessels with a history of non-compliance from reflagging.

(c) Authorization to fish

81. As required under the United Nations Fish Stocks Agreement and the FAO Compliance Agreement, and in line with the FAO Code of Conduct, IPOA-IUU requires that States ensure no vessel is allowed to fish without an authorization.[57] Vessels that are entitled to fish outside waters under the sovereignty or jurisdiction of the flag State need an authorization from the flag State, and where a coastal State issues an authorization to fish, it should ensure that no fishing in its waters occurs without an authorization to fish issued to that vessel by the flag State.[58]

82. These provisions provide a "checks and balances system" in which both the coastal State and the flag State are charged with the responsibility of ensuring that vessels fishing under their jurisdiction obtain the appropriate authorizations to fish. The authorization, which should include specified information such as vessel name, area for fishing, species to be fished and gear to be used, may be required to be carried on board.[59]

83. Flag States or coastal States may impose conditions on the authorization to fish, including the requirement for vessel monitoring systems, catch and transshipment reporting conditions, observer coverage, maintenance of fishing and related logbooks, navigational equipment, compliance with applicable international conventions and national laws and regulations, and unique marking and identification of vessel and gear.[60] This provision bolsters the flag State's ability to monitor more closely the activities of vessels which fly its flag.

84. Flag States should ensure that their fishing, transport and support vessels do not support or engage in IUU fishing. To this end, flag States should ensure that none of their vessels re-supply fishing vessels engaged in such activities or trans-ship fish to or from these vessels, except where appropriate for humanitarian purposes, including the safety of crew members.[61]

85. Flag States should also ensure that all of their fishing, transport and support vessels involved in trans-shipment at sea have a prior authorization to do so issued by the flag State. Flag States should report to the national fisheries administration or other designated institution and make aggregated information from catch and trans-shipment available to relevant regional and international organizations, including FAO, taking into account confidentiality requirements.[62]

Papers, studies and reports on the International Plans of Action

86. FAO has issued the following documents in connection with the IPOAs:

- "The International Plan of Action on Illegal Unreported Unregulated Fishing: the legal context of a Non-Legally Binding Instrument" by William Edeson (Legal Office, FAO), *International Journal of Marine and Coastal Law* 16 (4), 2001
- "Report of the 2nd Technical Consultation on Illegal, Unreported and Unregulated Fishing", Rome, 22-23 February 2001. FAO Fisheries Report No. 646
- "COFI — Report of the twenty-fourth session of the Committee on Fisheries", Rome, 26 February-2 March 2001. FAO Fisheries Report No. 655
- "Report of the 120th session of the Council of FAO", Rome, 18-23 June 2001. Report No. CL 120/REP
- "Report of the Technical Consultation on Illegal, Unreported and Unregulated Fishing", Rome, 2-6 October 2000. FAO Fisheries Report No. 634
- "Report of and papers presented at the Expert Consultation on Illegal, Unreported and Unregulated Fishing organized by the Government of Australia in cooperation with FAO", Sydney, Australia, 15-19 May 2000. FAO Fisheries Report No. 666
- "Tools to address IUU fishing: the current legal situation", by William Edeson (Legal Office, FAO), prepared as one in a series of specialist background papers for the Expert Consultation on Illegal, Unreported and Unregulated Fishing organized by the Government of Australia in cooperation with FAO, Sydney, Australia, 15-19 May 2000
- "National legislative options to combat IUU fishing", by Blaise Kuemlangan (Legal Office, FAO), prepared as one in a series of specialist background papers for the Expert Consultation on Illegal, Unreported and Unregulated Fishing organized by the Government of Australia in cooperation with FAO, Sydney, Australia, 15-19 May 2000
- "Illegal, unreported and unregulated fishing: considerations for developing countries", by Transform Aqorau (Legal Counsel, South Pacific Forum Fisheries Agency), prepared as one in a series of specialist background papers for the Expert Consultation on Illegal, Unreported and Unregulated Fishing

organized by the Government of Australia in cooperation with FAO, Sydney, Australia, 15-19 May 2000

4. FAO Technical Guidelines for Responsible Fisheries

87. FAO has published a number of technical guidelines in support of the implementation of the Code of Conduct, with respect in particular to the Code's requirements on Flag State responsibilities:

- "Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing". FAO Technical Guidelines for Responsible Fisheries, No. 9, 2002
- "Fisheries Management". FAO Technical Guidelines for Responsible Fisheries, No. 4, 1997
- "Fishing Operations". FAO Technical Guidelines for Responsible Fisheries, No. 1, 1996

II. Other relevant work undertaken by FAO

1. Other meetings and activities of relevance to the issue of flag State responsibilities

88. Other meetings and activities of relevance include the following:

(a) A joint FAO/IMO Ad Hoc Working Group on Illegal, Unreported and Unregulated Fishing and Related Matters was held in Rome from 9 to 11 October 2000. The meeting made a number of recommendations concerning port State controls and flag State controls;[63]

(b) An Expert Consultation to Review Port State Measures to Combat Illegal, Unreported and Unregulated Fishing was held at FAO headquarters, in Rome, from 4 to 6 November 2002. The consultation was convened with a view to facilitating the implementation of IPOA-IUU. The consultation also furthered collaboration with IMO, as called for in paragraph 90 of IPOA-IUU;[64]

(c) An Expert Consultation on Fishing Vessels Operating under Open Registries and their Impact on Illegal, Unreported and Unregulated Fishing was held at the Southeast Fisheries Science Center, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, in Miami, Florida, United States of America, from 23 to 25 September 2003. The experts focused on the effects of IUU fishing on global fishery resources and on lessons that might be learned from the experiences of flag States that had already implemented tighter control over the activities of their fishing vessels. Background papers presented to the consultation covered topics including: a global assessment of the extent of IUU fishing; fishing vessels operating under open registries and the exercise of flag State responsibility; standards relating to flag State responsibility over fishing vessels contained in recent international instruments; and the International Network for the Cooperation and Coordination of Fisheries-related Monitoring, Control and Surveillance Activities (International MCS Network). Three case-study presentations were also invited from experts from selected open registry countries (Cook Islands, Cyprus and Panama). A round-table discussion following the presentations led to the adoption of a number of recommendations for more effective application of flag State control over fishing vessels, particularly those operating under open registries, as a means to reduce the incidence of IUU fishing. The recommendations identified measures to be adopted by all States, flag States, coastal States and port States, as well as for assistance to developing States. Results of the Expert Consultation are intended to provide inputs for a Technical Consultation on IUU Fishing, Fleet Capacity and Subsidies planned for mid-2004, in accordance with a decision of the Committee on Fisheries at its twenty-fifth session in February 2003.[65]

2. Other activities of relevance under the FishCode Programme

89. When adopting the Code of Conduct, FAO member countries requested the organization to respond to the special requirements of developing countries through an Interregional Assistance Programme for the implementation of the Code (including the IPOAs and the Technical Guidelines). A special programme of global partnerships called FISHCODE was then established to promote responsible fisheries. The programme includes a global component focusing on normative issues related to specific articles of the Code of Conduct and a regional component dealing with aspects of Code implementation within specific geographical areas. Two components of the FISHCODE programme are of particular interest, one focusing on assistance to developing countries in implementation of the Code of Conduct in monitoring control and enforcement, and the other on support for the implementation of IPOA-IUU. A number of reports, articles and papers published by the FISHCODE programme may be of relevance to the work on flag State responsibilities:

- "Fishing Vessels operating under open registers and the exercise of flag State responsibilities. Information and options", by Judith Swan (Consultant, International Institutions and Liaison Service, FAO Fisheries Department). FAO Fisheries Circulars C980, 2002
- "Report of the National Workshop on Fisheries Monitoring, Control and Surveillance in support of Fisheries Management in Goa, India, 12-17 February, 2001". FAO/FISHCODE Project, GCP/INT/648/NOR, Field Report C-7 (En)
- "Final Report on Legal Advice to Thailand", by Ted McDorman (Legal Consultant). FAO/FISHCODE Project, GCP/INT/648/NOR, Field Report C-4 (En), 2000
- "Report of a Regional Workshop on Fisheries Monitoring, Control and Surveillance, held at Muscat, Sultanate of Oman, 24-28 October 1999." FAO/FISHCODE Project, GCP/INT/648/NOR, Field Report C-3 (En)
- "Report of a Regional Workshop on Fisheries Monitoring, Control and Surveillance, held at Kuala Lumpur and Kuala Terengganu, 29 June-3 July 1998. Supplement 2. Technical Papers". FAO/FISHCODE Project, GCP/INT/648/NOR, Field Report C-1/Suppl.2

3. FAO assistance to countries, including on the implementation of the 1993 FAO Compliance Agreement, the Code of Conduct, the IPOAs and other relevant fisheries-related instruments (including the 1982 United Nations Convention and the 1995 United Nations Fish Stocks Agreement)

90. FAO provides assistance and independent advice on agricultural (including fisheries) policy and planning, and on the administrative and legal structures needed for development. More specifically, FAO assists Governments in preparing national legislation (laws and regulations), agreements and other legal texts and advises on institutional structures and compliance with international law. Instrumental in carrying out these tasks is the introduction to countries, for possible implementation, of the international instruments developed under the auspices of FAO, and of course of other relevant international instruments they should implement. In the course of this work, a vast amount of comparative experience has been gained on current practices and conditions in countries, and on their varying needs and the challenges they face in making operational and functional the different requirements and approaches laid down in the international instruments mentioned in this paper.

91. Assistance is given to separate countries but also in the context of regional projects covering several countries. A number of regional workshops and seminars have had as their objectives the introduction of new international fisheries-related instruments, aimed not only at sensitizing countries to new approaches and developments but also at ensuring that the implementation process takes into consideration the regional or local conditions. In the course of this work a number of reports and papers have been produced during the past 10 years which may be of relevance to the issue of flag State responsibilities.

(a) Documents prepared under FAO projects of assistance to countries:

- "Assistance in Marine Fisheries Legislation in Angola", by José Luis Jesús, October 2003, under TCP/ANG/2901
- "Assistance in Marine Fisheries Legislation in Comoros", June 2003, by Patrice Talla (Legal Office, FAO), under TCP/COI/...
- "Assistance in Marine Fisheries Legislation in Gabon", February 2003, by Patrice Talla (Legal Office, FAO), under TCP/GAB/...
- "Establishment of Viet Nam's Fisheries Law and Regulations", reports prepared by W. R. Edeson, T. Lobach, H. Oostgard, A. Van Houtte and A. Wage, 2001-2003, under the Norway-Viet Nam Cooperation Project
- "Assistance in Fisheries and Marine Resources Management Legislation", March 2003, by Annick Van Houtte, under TCP/MDV/2801
- "Assistance in Marine Fisheries Legislation", by José Luis Jesús, September 2002. Assistance to Mozambique under TCP/MOZ/0170
- "High Seas Fishing Legislation — Draft Final Report", by Ilja Betlem (Legal Office, FAO), February 2002. Assistance to Barbados under TCP/BAR/0167 (A)
- "Review of the Fisheries Legislation of Saint Lucia — Report to the Government of Saint Lucia", based on the work by Gerald Moore, September 2001. Assistance to Saint Lucia under TCP/STL/0165 (A)

- "Assistance in marine fisheries legislation: Indonesia and international fisheries agreements", by Hasjim Djalal, March 2001. Assistance to Indonesia under TCP/INS/8922
- "Report on assistance to Tonga in fisheries legislation", by Blaise Kuemlangan (Legal Office, FAO), December 2000. Assistance to Tonga under TCP/TON/8923
- "High Seas Fishing Legislation — Final Report", by Ilja Betlem and Cristina Leria (Legal Office, FAO), August 2000. Assistance to Malaysia under TCP/MAL/8921 (A)
- "Assistance concerning flag States' responsibilities for fishing vessels under United Nations instruments — Report to the Government of Seychelles on Modification of National Legislation to Implement Fisheries Agreements", by Lawrence C. Christy (Legal Office, FAO), February 2000. Assistance to Seychelles under TCP/SEY/8921
- "Review of the Sea Fisheries Act — Report to the Government of South Africa", by A. Diemont, D. Devine W. R. Edeson, D. Fredericks, T. Papier and G. Ulfstein, February 1997. Assistance to South Africa under GCP/INT/606/NOR, Report No. FIMPLAP 96/46
- "Review of the Sea Fisheries Act — Report to the Government of Namibia", by Lawrence Christy (Legal Office, FAO), September-October 1996. Assistance to Namibia under GCP/INT/606/NOR, Report No. FIMPLAP 96/34

(b) Documents prepared under FAO projects with regional focus:

- "Development of Standards for the Construction and Inspection of Small Fishing Vessels". 2003. Organization of Eastern Caribbean States region. TCP/RLA/0069
- "Report of the Workshop on the Harmonization of Marine Fisheries Policy within Coastal Countries of the Southern African Development Community, Zanzibar, United Republic of Tanzania, 24-27 July 2001". FAO Fisheries Report No. 662
- "Report prepared for the Governments of the Organization of Eastern Caribbean States on the Implementation of Recent International Fisheries Agreements", by S. Hodgson and H. Walters, October 1996. GCP/INT/606/NOR, Report No. FIMPLAP 97/40

C. International Labour Organization

ILO and the maritime sector

(Prepared by the International Labour Office)

92. The present paper provides background information, a review of current measures being taken and a summary of recent studies by ILO on the question of flag State implementation. It focuses on two sectors: merchant shipping and fishing.

93. The main ILO web site concerning its work in the maritime sector is:

www.ilo.org/public/english/dialogue/sector/sectors/mariti.htm

I. Background information and review of current measures being taken concerning flag State implementation

1. Merchant shipping

(a) Background

94. All States aspire to achieving full social progress, as emphasized by the International Covenant on Economic, Social and Cultural Rights. The primary goal of the International Labour Organization is to promote opportunities for men and women to obtain decent and productive work, in conditions of freedom, equity, security and human dignity. Decent work means productive work in which rights are protected, which generates an adequate income, with adequate social protection. It also means sufficient work, in the sense that all should have full access to income-generating opportunities. The goal of providing decent work is as relevant to sea workers as it is to land workers. Men and women working on merchant ships and fishing vessels are therefore entitled to decent and productive work, in conditions of freedom, equity, security and human dignity.

95. The United Nations Convention on the Law of the Sea has placed on the flag State the primary responsibility for ensuring such conditions at sea. Article 94 of UNCLOS, "Duties of the flag State", provides that "Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag" (para. 1). It further provides that:

> "Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to:
>
> (a) The construction, equipment and seaworthiness of ships;
>
> (b) The manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;
>
> (c) The use of signals, the maintenance of communications and the prevention of collisions" (para. 3).

96. ILO Conventions and Recommendations, both core Conventions applying to all workers and specific maritime labour standards, are the applicable international instruments governing labour conditions. Between 1920 and 1996, ILO adopted 39 Conventions and other international instruments concerning the living and working conditions of seafarers.[66] These standards concern such matters as: training and entry into employment; conditions for admission to employment; certificates of competency; general conditions of employment; safety, health and welfare; labour inspection; and social security. Standards may include provisions for implementation by flag States, port States or labour-supplying States. While some Conventions have been ratified by more than 60 States, others have been ratified by only a handful.

97. A particularly important aspect of the maritime work of ILO is that not only Governments but also representatives of shipowners and seafarers are directly involved in the development of the standards. In this tripartite approach, all three groups have not only a voice but also a vote in the proceedings.

98. The work of ILO does not finish with creation of standards. A sophisticated supervisory mechanism established by the ILO Constitution goes beyond simple

unilateral compliance by States that have ratified Conventions and enables all three ILO constituents to follow up on the way standards are applied by the member States. To start with, the member States are obliged, pursuant to article 19 of the ILO Constitution, to bring a Convention adopted by the ILO Conference "before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action". Once the Convention has been ratified, its application will be the object of periodic reports made by the States to ILO on the basis of a specific format determined by the ILO Governing Body. These reports, submitted pursuant to article 22 of the ILO Constitution, are then examined by the Committee of Experts on the Application of Conventions and Recommendations as well as the International Labour Conference, or more specifically, its tripartite Conference Committee on the Application of Conventions and Recommendations. In addition to this "reporting" procedure, article 24 of the Constitution provides that an industrial association of employers or of workers can make a representation to the International Labour Office against any of the members that fail, in its view, to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party. Finally, a complaint submitted by a member State or by a delegate to the Conference pursuant to article 26 of the Constitution may lead to a Commission of Inquiry and eventually to a decision of the International Court of Justice.

99. The most comprehensive maritime labour standards are the provisions of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). Convention No. 147 provides, inter alia, that the member States ratifying it must undertake to have laws and regulations covering a wide range of issues and to exercise effective jurisdiction or control over ships which are registered in its territory in respect of those issues. Matters addressed include: safety standards, including standards of competency, hours of work and manning; appropriate social security measures; and shipboard employment and shipboard living arrangements, insofar as these, in the opinion of the member, are not covered by collective agreements or laid down by competent courts in a manner equally binding on the shipowners and seafarers concerned. Among other requirements, the member is to verify by inspection or other means that ships registered in its territory comply with applicable international labour Conventions in force which it has ratified, with the laws and regulations noted above and, as may be appropriate under national law, with applicable collective agreements. The member is to hold an official inquiry into any serious marine casualty. The Convention provides for port State control. The Protocol of 1996 to Convention No. 147 expands upon the matters covered by the Convention, in particular, by including the issue of limits on seafarers' hours of work or the provision of minimum periods of rest. Convention No. 147 has been ratified by 44 States in which are registered roughly 50 per cent of world shipping (by tonnage).

100. ILO is actively promoting the adoption of Convention No. 147 and its Protocol of 1996 through its Decent Work in the Maritime Industry programme.

101. Two other recently adopted standards of particular relevance to flag State implementation are the Labour Inspection (Seafarers) Convention, 1996 (No. 178) and its accompanying Recommendation (No. 185). Convention No. 178, inter alia, provides that a member State that ratifies the Convention shall ensure that all ships registered in its territory are inspected at intervals not exceeding three years, and when practicable, annually, to verify that seafarers' working and living conditions

on board conform to national laws and regulations. As of 12 August 2003, Convention No. 178 had only been ratified by eight countries.

102. All ILO Conventions and Recommendations are available on the Internet and may be viewed by visiting the ILO home page at www.ilo.org and clicking on the words "International Labour Standards". A listing of standards specific to the maritime sector can be found at: www.ilo.org/public/english/dialogue/sector/sectors/mariti/standards.htm.

103. On its own, or in collaboration with the International Maritime Organization, the World Health Organization, and other specialized agencies of the United Nations system, ILO has prepared several codes and guidelines providing guidance on flag State implementation of maritime labour standards. Examples include: *Inspection of labour conditions on board ship: Guidelines for procedure* (published in 1990) and the *IMO/ILO Guidelines for the Development of Tables of Seafarers' Shipboard Working Arrangements and Formats of Records of Seafarers' Hours of Work or Hours of Rest* (published in 1999).

104. ILO also participates, as an observer (and as resources permit), in the committees of a number of regional port State control agreements. This has resulted, particularly in the countries with maritime authorities signatory to the Paris Memorandum of Understanding on Port State Control, in pressure on ships (and, indirectly, on flag State authorities) to ensure that living and working conditions are at least at the standard of Convention No. 147. Article 4 of the Convention provides that the port State "may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health". As concerns the Convention, Port State control officers generally focus on safety and health matters (e.g., food, accommodation, medical equipment), as opposed to other matters (e.g., articles of agreement, sickness and injury benefits).

(b) Current measures being taken concerning flag State implementation

105. In keeping with recommendations by its bipartite Joint Maritime Commission and subsequent decisions by its Governing Body, ILO is in the process of consolidating its maritime labour Conventions and Recommendations into a single consolidated Framework Convention. The Governing Body has established a High-level Tripartite Working Group on Maritime Labour Standards for this purpose. This High-level Group and its Subgroup have met several times to discuss the structure and contents of the new standard. The Office (ILO secretariat) has prepared background documents text for consideration for these meetings and has prepared reports summarizing discussions at the meetings. These documents may be found on the ILO web site concerning its work in the maritime sector. Particularly relevant documents are noted in paragraphs 118 to 120 below.

106. The new standard is expected to be adopted by a Maritime Session of the International Labour Conference in 2005. It should have a substantial impact on the role of flag States as concerns working and living conditions on board ships.

107. Ensuring effective enforcement of the new Convention has been a major, essential issue throughout the preparatory work. The current draft of the Convention includes a title (one of five titles) which specifically addresses enforcement. The section is designed to place the various aspects of enforcement at the national level in a separate part encompassing the whole Convention, thus clearly defining the

roles of the various actors in the field of enforcement. It is envisaged that the new standard will include both traditional enforcement practices through inspection and sanctions and more contemporary practices aimed at ensuring continual compliance between inspections. The High-level Group has generally endorsed the adoption of some form of certificate-based system combined with other measures (existing ILO Conventions only provide for certificates of competency for certain positions and a medical fitness certificate). ILO member States ratifying the Convention would be required to establish a system for ensuring compliance with the Convention. The system would be subject to certain quality control measures still under discussion.

108. As indicated above, the consolidated Convention aims to place increased emphasis on the need for each member to evidence compliance with the standards of the Convention and to have an overall system of quality control and independent evaluation. Through these kinds of means, supervisory bodies are placed in the best possible position to follow implementation by ratifying members and are able to assess the extent to which the desired level playing field is de facto in place.

109. It is envisaged that a special tripartite maritime body, reporting to the ILO Governing Body, will be established to keep the Convention under continuous review. A simplified amendment procedure will facilitate keeping the technical provisions up to date with changes in the maritime sector. Consideration is also being given to providing for a greater role for Governments, shipowners and seafarers in the provision of advice to the existing ILO bodies responsible for the supervision of international labour standards.

110. Information concerning the development of the standard, including the reports prepared for meetings and the reports of meetings, is available on the ILO web site.

111. Other recent work relevant to flag State implementation is described under section II below.

2. Fishing

(a) Background

112. ILO has also adopted seven standards (five Conventions and two Recommendations) for the fishing sector. These concern the following issues: minimum age, medical examination, accommodation, articles of agreement, competency certificates, vocational training and hours of work. They can be viewed by visiting the web page concerning maritime labour standards, as noted above.

113. Moreover, ILO has adopted, on its own or in collaboration with the Food and Agriculture Organization of the United Nations, the International Maritime Organization, and other specialized agencies of the United Nations system, several codes and guidelines providing guidance on flag State implementation of maritime labour standards.

(b) Current measures being taken concerning flag State implementation

114. In keeping with decisions taken by its Governing Body, ILO is preparing a comprehensive standard (a Convention supplemented by a Recommendation) on work in the fishing sector. This new standard will revise the seven standards noted above and will be completed in 2005.

115. It is too early to determine how the new standard will improve flag State implementation. However, in its preparatory work the Office is seeking views on possible port State control provisions and a greater role by coastal States concerning labour conditions on fishing vessels operating in their exclusive economic zones. Information on the development of the standard is provided on the ILO web site.

II. Recent studies relevant to flag State implementation

1. Shipping

29th Session of the Joint Maritime Commission (22-26 January 2001)

116. At its most recent full session, the bipartite Joint Maritime Commission discussed, inter alia, a report entitled "The impact on seafarers' living and working conditions of changes in the structure of the shipping industry". The report provides considerable information concerning the conditions of work of seafarers. It examines some of the main changes that have occurred in world shipping and that have influenced the labour market and conditions of work and life in the shipping sector. It also addresses certain aspects of the labour market for seafarers as well as a number of changes that have had an impact on conditions of work, including the reduction in influence of national regulatory regimes and the impact of international recruitment on the employment of seafarers. The report discusses such issues as wages, hours of work, food, accommodation and welfare, as well as such issues as gender and abandonment of seafarers. The report ends with concluding remarks and points for discussion.

117. The Commission adopted a number of resolutions, including the resolution calling for the convening of the High-level Tripartite Working Group on Maritime Labour Standards described above (para. 105). In another resolution, concerning substandard shipping, the Commission expressed concern that a substandard shipping operation had been defined in terms of being substantially below the requirements established by the International Maritime Organization, without giving due regard to compliance with other international requirements. It therefore called for measures to be taken to ensure that applicable ILO social and labour standards were given due consideration in determining whether a ship or operation was substandard. In still another resolution, the Commission noted that the issue of flags of convenience had been on the agenda of Conferences of ILO since 1933 and that despite several reports, enquiries, Conventions, Recommendations and resolutions on the issue, it had remained one of deep concern for seafarers. This last resolution led to the convening of a meeting of experts on international registers (see paras. 122-126 below).

Meetings of the High-level Tripartite Working Group on Maritime Labour Standards and its Subgroup (ongoing)

118. As noted above, a number of reports have been produced for and by the High-level Group and its Subgroup that are relevant to the issue of flag State implementation, in particular:

- An analysis of the essential aspects of decent work in the maritime context (STWGMLS/2002/5)

- Considerations for provisions on inspection and control in a consolidated maritime labour Convention (TWGMLS/2002/1)

119. The report entitled "An analysis of the essential aspects of decent work in the maritime context" attempts to identify the issues involved in the application of the concept of decent work to merchant shipping. The extent to which principles of decent work are part of ordinary practice in the maritime industry is analysed in detail. The report concludes that there are still some outstanding issues to be addressed, which would need to be taken into account by the consolidation efforts.

120. The report entitled "Considerations for provisions on inspection and control in a consolidated maritime labour Convention" focuses on the main ingredients for possible provisions for the consolidated Convention's enforcement system. It proposes a set of elements based on the various solutions and ideas identified for strengthening inspection and control. Moreover, it suggests a central role for the flag State and devises internal complaint and resolution procedures as an important means of achieving accountability of substandard flag States or shipowners as well as of disseminating information on substandard ships.

121. The evolving draft of the Convention will be posted on the ILO web site. Attention is directed to the articles, titles, regulations and code (both mandatory and recommendatory) concerning enforcement. These include provisions not only related to the roles of flag States in enforcement but also the roles of port States and labour-supplying States.

Meeting of Experts on Working and Living Conditions of Seafarers on board Ships in International Registers (Geneva, 6-8 May 2002)

122. A number of background documents were prepared for this meeting.

123. Report 1 provides the results of an investigation of the factors and variables that influence the living and working conditions of seafarers and documents customary practice. The information was gathered through a survey on: (a) general questions concerned with the inspection of living and working conditions, restrictions on the use of foreign seafarers, legislation, and collective agreements for nationals and non-nationals; (b) employment conditions within flag States, with questions focused on recruitment issues, minimum age, wages, health and social security; and (c) questions for labour-supplying countries, with an emphasis on the extent to which domestic legislation may protect seafarers working on vessels flying foreign flags. The study highlights the wide diversity in seafarers' living and working conditions in an industry undergoing substantial economic and social change. It confirms the need to reshape and enforce regulation at the national and international levels in order to safeguard the industry and the seafarers employed in it.

124. Report 2 provides case studies on the shipping registers of Denmark, India, the Isle of Man, Panama and the Philippines with regard to labour issues.

125. Report 3 draws conclusions from the global study in report 1 and the case studies in report 2. It concludes, inter alia, that the regulatory structure of certain open registers, while elaborate with regard to, for example, technical safety issues, often seems to fall short with regard to social issues, especially as concerns enforcement. The issue also arises as to whether certain flag States have the capability or desire to intervene in order to enforce their own shipping regulations.

126. The final report of the Meeting of Experts contains a summary of the proceedings of the meeting and a *Consensual Statement of the Meeting of Experts*. Paragraphs 58 through 60 of the report, which set out views of the Shipowner, Seafarer and Government groups, as well as the full text of the *Consensual Statement of the Meeting of Experts* (see para. 136 below), are particularly relevant to the issue of flag State enforcement.

Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers

127. The Joint IMO/ILO Working Group has met five times in recent years. The documents listed below are particularly relevant to the work of the Consultative Group. They provide background information concerning problems relating to claims resulting from the death or personal injury of seafarers and the problem of abandonment of seafarers, summarize the discussions by the Joint Working Group on these issues and set out the solutions proposed, including two joint resolutions aimed at IMO and ILO member States.

- Report of the first session of the Joint Working Group, in particular the conclusions, as provided in paragraphs 11.1 to 11.6 (see especially para. 11.5)
- Report of the third session of the Joint Working Group, in particular the draft resolutions on Guidelines on Provision of Financial Responsibility in Case of Abandonment of Seafarers and on Guidelines on Shipowners' Responsibilities in Respect of Contractual Claims for Personal Injury to or Death of Seafarers (the draft resolutions have since been finalized and agreed by both IMO and ILO)
- Report of the fourth session of the Joint Working Group (appended to GB.286/STM/3), in particular annex 2, which provides a "Questionnaire on monitoring of Resolutions and Guidelines concerning the Provision of Financial Security in case of Abandonment of Seafarers", and annex 3 concerning Guidelines on Shipowners' Responsibility in Respect of Contractual Claims for Personal Injury to or Death of Seafarers and a "Questionnaire to States on Implementation"
- Report of the fifth session of the Joint Working Group, in which the Group reiterated its request to Governments for reports on incidents of abandonment and for replies to the questionnaire concerning the monitoring and implementation of guidelines on provision of financial security in case of abandonment of seafarers. The Group also agreed that the time had come to request the Governing Body of ILO and the IMO Legal Committee to authorize the Group to proceed with the development of a longer-term sustainable solution to address the problems of financial security with regard to compensation in case of death and personal injury.

128. These documents can be found on the ILO web site at:

www. ilo.org/public/english/dialogue/sector/sectors/mariti.htm

Other publications

129. ILO will shortly publish two books concerning the shipping sector which will be of relevance to enforcement. The first concerns seafarers in general; the second concerns women seafarers.

130. *The Global Seafarer* offers an account of the effects of globalization on the shipping industry and seafarers' lives. It discusses recruitment practices, trade unions and collective bargaining, as well as training, certification and fraudulent certification. Other questions dealt with include wages, contracts and tours of duty, as well as in-depth treatments of seafarer safety and hazard exposure.

131. *Women Seafarers* focuses on contemporary women seafarers at the global level. It addresses a host of issues surrounding the working conditions and welfare of women, from both developed and developing countries, employed aboard the world's merchant and passenger ships. Drawing on extensive research, the book considers women's participation levels in the industry and examines policies concerning their recruitment, training, maternity and employment rights, and other aspects of work and life at sea. It also offers first-hand accounts from women seafarers describing how they have dealt with discrimination, sexual harassment, parental disapproval and an array of other difficulties. The practices and policies of national and international regulatory agencies, employers, trade unions and maritime education institutions are analysed and followed by a series of recommendations that may further help the integration of women into shipboard communities.

2. Fishing

Tripartite Meeting on Safety and Health in the Fishing Industry (Geneva, 13-17 December 1999)

132. The *Note on the Proceedings* of this meeting may be of interest, in particular the conclusions and the resolution concerning future ILO activities in the fisheries sector and concerning social dialogue.

Preparation of a comprehensive standard (a Convention supplemented by a Recommendation on work in the fishing sector) (ongoing)

133. The Office has recently published report V(1) for the 92nd session of the International Labour Conference. The report, entitled "Conditions of work in the fishing sector: a comprehensive standard (a Convention supplemented by a Recommendation) on work in the fishing sector", contains information on law and practice in member States and contains a questionnaire addressed to member States on the possible form, scope and content of the new instrument. Enforcement issues are discussed throughout the report and, in particular, in a chapter concerning administration, enforcement, consultation and coordination.

134. The documents concerning the work of ILO in the fishing sector can be found at:

www.ilo.org/public/english/dialogue/sector/sectors/mariti/fishing-iloact.htm

III. Solutions, remedies and strategies

135. Consideration should be given to the following:

1. States which have not done so should ratify ILO maritime labour standards, in particular the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) and its Protocol of 1996.

2. States should be encouraged to become involved in the preparation of the ILO consolidated framework Convention for the merchant shipping sector and in the preparation of its comprehensive standard for the fishing sector. Involvement should include national discussions on this preparatory work and on measures to be taken to implement the new standards once they are adopted.

3. States should be encouraged to take into account the Consensual Statement of the Meeting of Experts on Working and Living Conditions of Seafarers on board Ships in International Registers (see para. 136).

4. States should implement the ILO/IMO resolutions on Guidelines on Provision of Financial Responsibility in case of Abandonment of Seafarers and on Guidelines on Shipowners' Responsibilities in Respect of Contractual Claims for Personal Injury to or Death of Seafarers.

5. Specialized agencies of the United Nations system with a role in flag State implementation should participate in the development of new ILO standards for the merchant shipping and fishing sectors. Consideration should be given to developing a system for the continuous exchange of information concerning flag State implementation.

6. Consideration should be given to ways of increasing the role of employer (shipowner) and worker (seafarer) representative organizations at international debates concerning flag State implementation.

7. Meetings of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea should be timed so as not to coincide with major international Conferences of other specialized agencies of the United Nations system.

136. The full text of the Consensual Statement of the May 2002 Meeting of Experts (see paras. 122-126 above) is reproduced below:

Consensual Statement of the Meeting of Experts on Working and Living Conditions of Seafarers on board Ships in International Registers (Geneva, 6-8 May 2002)

1. The experts consider this tripartite Meeting to be an opportunity to continue the multifaceted drive of Governments, seafarers and shipowners already under way to improve the living and working conditions for all seafarers regardless of nationality or domicile.

2. The experts stress the need for the strongest possible national and international measures to be taken against breaches of international labour standards, including violations of freedom of association and the right to

organize and collective bargaining, which undermine decent living and working conditions for seafarers.

3. The experts consider that it is urgent to effectively address the decent work deficits in the shipping industry. It is recognized that conditions of employment, social protection, social security and social dialogue, including collective bargaining, are matters that will require particular attention. To this end, the experts recognize the importance of the decent work at sea programme and invite the Governing Body to instruct the Office to secure further action, in consultation with the constituents.

4. The experts recognize that consideration should be given to a possible mechanism by which a performance measurement for flag States in respect of ILO instruments might be introduced.

5. The experts consider that, in the context of enforcement, due consideration should be given to the relevant provisions of UNCLOS and the relevant provisions of the ISM Code.

6. The experts stress the importance of the following principles and rights.

(1) In order to effectively exercise its jurisdiction in social matters, every State shall have a sound maritime administration with a firm legislative framework complying with, as a minimum, international labour standards, and a strong enforcement mechanism;

(2) The flag State has the overall responsibility for ensuring that the rights of seafarers are respected in relation to service on board ships flying its flag;

(3) Every flag State shall have in place means to enforce decent living and working conditions on ships flying its flag wherever they may be in the world;

(4) Every State shall ensure that manning agencies for seafarers legally established within its jurisdiction are subject to government control and shall ensure that seafarers' rights are respected;

(5) All States shall have in place the necessary mechanism for monitoring living and working conditions on ships visiting their ports, in accordance with international instruments in force;

(6) All inspectors responsible for the control of living and working conditions shall be properly qualified, trained and shall have clear terms of reference;

(7) Every flag State should ensure that shipowners are responsible for making available to the seafarers the applicable laws, regulations and collective agreements addressing their living and working conditions and should, in accordance with national law and practice, ensure that they are enforced;

(8) All States shall provide easy access to simple and inexpensive procedures enabling all seafarers, regardless of nationality and domicile, to make complaints alleging a breach of national legislation on living and working conditions or employment contracts and/or articles of agreement;

(9) All shipowners shall provide and be responsible for safe and decent working conditions for seafarers they employ or engage;

(10) In States where manning agencies are legally established, the manning agencies shall be made jointly and severally liable with shipowners, regardless of their domicile, for breach of the contract of employment and/or articles of agreement.

D. United Nations Environment Programme

(Prepared by the secretariat of UNEP)

137. Marine emergencies and large-scale oil spills involving sub-standard ships and tankers have a dramatic impact on the marine and coastal environment, for which UNEP has direct responsibilities. However, UNEP does not have a direct role in the legal or institutional aspects related to flag State control.

138. The present report concentrates on the three main avenues through which UNEP may contribute to the prevention of, preparedness for and response to major oil spills, and thereby contribute to safer and cleaner oceans.

1. Regional seas: providing a platform for regional implementation of global conventions related to oil spill preparedness and response

139. The Regional Seas programme provides a major legal, administrative, substantive and financial framework for the implementation of Agenda 21 and its chapter 17 on oceans in particular and is based on periodically revised action plans adopted by high-level intergovernmental meetings and implemented, in most cases, within the framework of legally binding Regional Seas Conventions, under the authority of the respective Contracting Parties or intergovernmental meetings. The regional seas programmes offer a technical, scientific, legal and institutional framework to facilitate the effective implementation of international agreements at the regional and subregional levels.

140. The UNEP Regional Seas programme is based on regional action plans, related to a common body of water, adopted by high-level intergovernmental meetings and implemented, in most cases, in the framework of a legally binding regional seas convention and related protocols which have a technical perspective, for example, cooperation in case of emergencies from maritime-related activities.

141. Today more than 140 countries participate in 13 regional seas programmes established under UNEP auspices: Black Sea, Caribbean, East Africa, East Asia, Kuwait Convention region, Mediterranean, North-East Pacific, North-West Pacific, Red Sea and Gulf of Aden, South Asia, South-East Pacific, South Pacific, and West and Central Africa. There are also five partner programmes, for the Antarctic, the Arctic, the Baltic Sea, the Caspian Sea and the North-East Atlantic.

142. Each programme is tailored to the specific needs of its coastal States, but is based on similar components:

- An action plan for regional cooperation on the management, protection, rehabilitation, sustainable development, monitoring, research and assessment of coastal and marine resources
- An intergovernmental agreement to a framework convention embodying general principles and obligations (although in some cases, programmes operate without legally binding agreements)
- Detailed technical protocols dealing with particular environmental problems related to the protection of the marine environment, such as accidental spill preparedness, response and cooperation in emergencies, dumping at sea, biodiversity and protected areas and land-based activities

An important concept promoted by UNEP is the message that the regional seas programmes offer a valuable platform for regional implementation of global programmes, global initiatives, global conventions (multilateral environmental agreements (MEAs)) and programmes of work of international organizations which are aimed at the sustainable management and the protection of the marine and coastal environment.

143. The main objective of this short report on UNEP and the international regimes or initiatives for the reduction of risk of oils spills from sub-standard tankers, such as flag State control, is to demonstrate the role of the UNEP regional seas programmes as an instrument for regional implementation in the development, monitoring, implementation and enforcement of this global initiative, which originated within IMO.

144. Prevention, preparedness and response to marine pollution from ship-related activities are regulated at the global level through global conventions, mostly adopted by IMO. Regional arrangements related to marine-based pollution prevention and response are aimed at organizing cooperation for efficient and effective implementation of the global conventions and express the political commitment of the Governments of a given region to cooperate on this matter. Since shipping is a worldwide activity for which regulations have been adopted at the global level, the secretariats of the various regional seas programmes and their dedicated regional accidental pollution response centres can be used as an existing, effective platform for improved and coordinated regional implementation of international agreements, programmes and initiatives related to ship-generated and marine-based pollution.

145. Some of the regional seas programmes (the Mediterranean, the Caribbean, the North-West Pacific, the Regional Organization for the Protection of the Marine Environment (ROPME)/Kuwait Convention sea area) have established specialized and dedicated regional activity centres which are in most cases operated jointly by IMO and UNEP and are aimed at addressing prevention, preparedness and response to marine-based emergencies and pollution incidents. For the most part, these regional activity centres consist of a pool of resources/expertise to assist contracting or member countries in their efforts to develop national contingency plans and national capacities but also a tool for the promotion of bilateral and multilateral cooperation in preparedness and response. In addition to this overall responsibility, some centres have developed their own specialization or practice according to the

needs in the region, each utilizing a network of participating scientific, academic and policy institutions from the regions relevant to the particular centre's mandate.

2. An existing regional structure: the case of the Mediterranean

146. The Mediterranean Action Plan (MAP, under the Barcelona Convention) is an example of regional cooperation in the field of protection of the marine environment from maritime accidents and illegal discharges from ships. The concern of the MAP member States over major accidents (but also smaller-scale incidents and operational discharge of oil from shipping and oil transport activities) gave rise to the establishment and operation of the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC), based in Malta.

147. For demonstration purposes REMPEC was selected as an example of the platform that may be provided for the implementation of the flag State regime. It is the aim of UNEP to develop in all regional seas conventions and action plans regional activity centres that will follow the REMPEC model.

(a) The institutional framework

148. The Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea was established in 1976 to assist the Mediterranean coastal States in the development of their national preparedness and response systems and in the preparation and implementation of their national contingency plans for marine pollution from ship-related activities. The Centre aims to strengthen the capacities of the coastal States in the Mediterranean region with a view to preventing pollution from ships and ensuring the effective implementation of the rules which are generally recognized at the international level. REMPEC also aims to develop and facilitate regional cooperation not only in the fields of preparedness and response in combating accidental marine pollution, but also in the field of prevention of pollution from oil tankers and other ships. The Centre has developed a regional system for alerting and communication in case of a marine pollution emergency and plays a crucial role in promoting effective implementation of the relevant international regulations, including the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) and the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC 1990), by the flag States, port States and coastal States as applicable.

149. REMPEC is currently implementing a project on port reception facilities in the Mediterranean. The project aims to reduce pollution of the Mediterranean Sea by ship-generated solid wastes and oily waters and residues. More specifically it aims to promote, in accordance with annexes I and V to MARPOL 73/78, the installation of port reception facilities for the collection of garbage, bilge water and oily residues generated by ships.

150. UNEP and IMO also jointly operate or facilitate the operation of the Marine Environmental Emergency Preparedness and Response Regional Activity Centre in the North-west Pacific Action Plan (NOWPAP/MERRAC), located in Daejon, Republic of Korea; the Regional Activity Centre of the Regional Marine Pollution Emergency, Information and Training Centre for the Wider Caribbean Region (RAC/REMPEITEC-Carib), in Curacao, Netherlands Antilles; the Emergency Response Centre for the Black Sea in Varna, Bulgaria; and the Marine Emergency Mutual Aid Centre (MEMAC) in Manama, Bahrain, for the ROPME region.

s on prevention

Regional legally binding agreements are needed to enable effective regional
ration and to provide the legal basis for the relevant authorities to secure
rt and funding. The adoption of a new MAP Protocol to the Barcelona
ntion concerning Cooperation in Preventing Pollution from Ships and, in
of Emergency, Combating Pollution of the Mediterranean Sea (Prevention and
ency Protocol), in 2002, gave REMPEC the necessary legal basis to
ntrate its efforts in tackling the problem of both operational and accidental
ion from ships. As a legal instrument complementing the Convention, the
ntion and Emergency Protocol sets out the main principles of cooperation in
g with threats to the marine environment and coasts posed by accidental
es or by accumulations of small discharges of oil or other harmful substances.

With the adoption of the Prevention and Emergency Protocol, the States in the
erranean have seized the opportunity to establish a strategy on a sound legal
and now have the necessary legal framework which has given them the
bility to work together to reduce the impact of shipping operations and, in
rative action, to tackle issues of importance such as port reception facilities,
nanagement of ballast water, surveillance of operational discharges and
cution of offenders, ports and places of refuge for ships in distress,
ational safety and navigational aids.

Legal benefits achieved by the new Prevention and Emergency Protocol
de, first, the fact that, while the previous Protocol was dedicated to the
ration between coastal States of the Mediterranean in the field of preparedness
esponse in case of maritime accidents which pollute or threaten to pollute the
he new Prevention and Emergency Protocol, in addition to preparedness and
nse, addresses pollution prevention from ships. Secondly, while the previous
col only focused on the role of the coastal State, which is at the front line for
nding to accidental pollution or the threat of accidental pollution, the new
col, in accordance with the international law of the sea, calls for the
ibution and participation of a number of parties, i.e., the coastal State, as well
e flag State, with regard to flag State control; and the port State, particularly
regard to the provision of adequate port reception facilities, the reception of
in distress in ports and the provision of place of refuge. The enforcement by
ian States of the broad range of duties assigned by the new Protocol to coastal
s, flag States and port States will certainly constitute the right means to finally
ol all aspects of pollution by ships in the Mediterranean.

More specifically with regard to pollution prevention, one of the future aims of
IPEC and other regional seas dedicated centres is to improve the standard of
State and port State inspections by developing a uniform regional standard for
el inspection procedures and to improve the knowledge and expertise of
ection officers by establishing, through the centres, a programme of training for
personnel.

(c) Preparedness and response

155. In addition to the legal and institutional components, the specialized regional activity centres operating as a part of the regional seas secretariats, may contribute to the operational aspects of response in combating and mitigating the actual spills once the oil has reached the sea water.

156. As an example of the above, the Mediterranean Assistance Unit for responding to accidental marine pollution has been formed within the framework of the MAP Emergency Protocol and is operational within the terms of reference of REMPEC. Experts sent to the scene of an accident as part of the Mediterranean Assistance Unit provide advice and technical expertise to the authorities to assist them during the initial phases in deciding on the appropriate response measures and on the additional necessary assistance to be provided. Another role of the Unit is to help the requesting State to implement the provisions for regional cooperation in case of emergency, particularly through the arrangements and procedures adopted by the Contracting Parties aimed at facilitating cooperation and mutual assistance.

157. One of the main objectives of the OPRC 1990 Convention is to develop cooperation at the global level and facilitate assistance with response to pollution. When the response capability of a region is not sufficient to face an emergency situation, assistance can be obtained directly from parties to the OPRC 1990 Convention or through IMO under the Convention. Procedures for joint response operations should be developed as part of the preparedness and response system, using the guidelines of IMO, particularly with regard to the administrative arrangements such as customs and immigration matters. Cooperation between IMO and UNEP has played a significant part in developing regional arrangements for cooperation in oil pollution preparedness and response, and regional agreements have now been adopted in most regions of the world. Under these agreements, regional and subregional contingency plans have been established in many parts of the world, thereby ensuring the efficient integration of the marine pollution response mechanisms into the general framework of the regional seas conventions and programmes.

158. Prior to the adoption of the OPRC 1990 Convention, IMO, UNEP and other organizations for many years actively cooperated in encouraging the development of regional arrangements for combating marine pollution in case of emergency. This cooperation has resulted in the development of intergovernmental regional agreements that commit groups of States and the secretariats of those regional conventions to cooperate in responding to major incidents of marine pollution that are likely to affect more than one State. This commitment is reinforced in several regions by the establishment of regional and subregional contingency plans and regional centres. Furthermore, in article 10 of the OPRC 1990 Convention the parties are urged to implement its provisions through bilateral and regional mechanisms.

3. Inter-agency cooperation

159. There is a self-evident need for inter-agency cooperation in developing global and regional strategies responding to the necessity for preventing and minimizing environmental and economical consequences caused by major tanker accidents.

160. To that end, UNEP and IMO jointly organized in 1985 a meeting of experts on regional arrangements for cooperation in combating major incidents of marine pollution. The primary purpose of the meeting was to encourage regional and interregional cooperation in combating major accidents of marine pollution.

161. A more recent development is the establishment, in October 2002, of a joint IMO/UNEP Forum on Regional Arrangements for Cooperation in Combating Marine Pollution Incidents. The main objective of the forum is to bring together representatives of the secretariats and the regional centres of the different regional seas conventions and action plans in order to exchange experiences and to discuss issues of common concern as well as to discuss activities and programmes implemented in the regions and subregions, including between those which have acquired considerable experience in implementing regional counter-pollution arrangements and those which are in the early stages of implementing such arrangements. The goal of the forum is to make recommendations for future interregional and inter-agency cooperation and international assistance among the regional entities and to identify areas for possible harmonization of procedures and collaboration.

4. Conclusion

162. The UNEP Regional Seas programme, through the regional secretariats and the dedicated oil spill preparedness and response regional activity centres, may provide an effective platform for the regional development and implementation of flag State control and other relevant measures to prevent and reduce the environmental and economical damage caused by large oil spills.

163. Inter-agency cooperation is required for joint establishment and to increase the effectiveness of the implementation of such initiatives, resulting in increased monitoring and enforcement of measures at the regional and national levels.

E. United Nations Conference on Trade and Development

The United Nations Conference on Trade and Development and flags of convenience

(Prepared by the UNCTAD secretariat)

164. Over the past 25 years UNCTAD has to varying degrees been involved in the question of ship registration, open registries and their impact on world shipping. In 1978, a major report on flags of convenience was produced by UNCTAD[67] which brought the issue to the forefront of international scrutiny. There was wide agreement at the time that flags of convenience constituted a major threat to the beneficial development of international shipping and a major impediment to the transfer of shipping activities to developing countries. In that context an extensive debate took place on the economic, social and environmental impact of the increasing use of open registries. The involvement of UNCTAD in the issue of open registries culminated in the adoption of the United Nations Convention on Conditions for Registration of Ships in 1986. Since that time, the work of the UNCTAD secretariat on the issue has centred around the quantitative analysis of the flag of convenience phenomenon through the annual review of maritime transport,

as well as assistance on demand to countries wishing to become parties to the Convention or implementing elements of the Convention in their national legislation on ship registration.

United Nations Convention on Conditions for Registration of Ships 1986

165. The question of phasing out open registers and conditions for registration of ships was a subject of discussion within UNCTAD for over a decade. The fifth UNCTAD Ministerial Conference, held in Manila in 1979, adopted by majority vote resolution 120(V) in which it took note of the desire of many countries to phase out open registry operations, and requested further studies, including on "the repercussions of phasing out open registries, its economic and social impact on economies of developing countries, its effect on world shipping" and "the feasibility of establishing a legal mechanism for regulating the operation of open-registry fleets during the phasing-out period".

166. The publication of a number of studies and intensive debates at the intergovernmental meetings did not lead to agreement on the open-registry issue. It was therefore apparent that the initial objective of the work was unattainable. The discussion was then focused on the desirability of the existence of a "genuine link" between a vessel and the country that accepted it on its national shipping register. While the concept of "genuine link" already existed in the 1958 Convention on the High Seas and the 1982 United Nations Convention on the Law of the Sea, neither of those Conventions provided a definition of the genuine link.

167. Following protracted deliberations within an Intergovernmental Preparatory Group and a four-part United Nations Conference, under the auspices of UNCTAD, the Convention on Conditions for Registration of Ships was adopted on 7 February 1986. The Convention establishes the minimum elements of the "genuine link" that should exist between a ship and the State whose flag it flies. Thus article 1 of the Convention sets out its objectives as follows:

> "For the purpose of ensuring or, as the case may be, strengthening the genuine link between a State and ships flying its flag, and in order to exercise effectively its jurisdiction and control over such ships with regard to identification and accountability of shipowners and operators as well as with regard to administrative, technical, economic and social matters, a flag State shall apply the provisions contained in this Convention."

168. Articles 8, 9 and 10 aim at establishing economic links between a ship and the flag State by providing for participation by nationals of the flag State in the ownership, manning and management of the ship. Article 6 dealing with identification and accountability requires a State to take the necessary measures to ensure that owners and operators of a ship on its register are "adequately identifiable for the purpose of ensuring their full accountability". The Convention includes provisions of both a mandatory and a non-mandatory nature, which dilutes its effectiveness to a considerable extent.

169. The Convention is to enter into force when ratified by 40 States representing 25 per cent of world tonnage.

170. Almost 20 years have elapsed since the adoption of the Convention. The evolution of the events since that time, and particularly those of 11 September 2001, have shown that building the requirements and conditions for registration of ships

mainly on "genuine link" criteria, as defined by the 1986 Convention, is not sufficient. Tighter control is required of a State accepting a vessel in its register. The time may be ripe to revisit the Convention with a view to determining the amendments and modifications required to adapt it to meet the current security requirements.

Open-registry countries and their fleet

171. Since 1968, UNCTAD has been reporting about open-registry countries in its annual publication *Review of Maritime Transport*. The present section summarizes information from different years to highlight the main features of open registers over the long run and reviews the developments leading to the adoption of the United Nations Convention on Conditions for Registration of Ships.

172. The distinctive feature of open registers is the vague, or non-existent, link between the flag of registration and the ship. Article 1 of the 1986 United Nations Convention on Conditions for Registration of Ships states that its aim is to strengthen "the genuine link between a State and the ships flying its flag". As of 31 July 2003, only 11 countries (Bulgaria, Côte d'Ivoire, Egypt, Georgia, Ghana, Haiti, Hungary, Iraq, Libyan Arab Jamahiriya, Mexico and Oman) were Contracting Parties to the Convention.

173. Over the years a number of countries have been classified as open-registry countries. The six countries indicated in table 1 have consistently been included in the list of major open-registry countries which appears in the *Review of Maritime Transport* of UNCTAD. In 2003, the top two countries accounted for 66.1 per cent of the open-registry fleet, while their share in 1970 was 95.7 per cent, which is a clear indication of the proliferation of registers offering flag of convenience facilities.

Table 1
Fleet size of open-registry countries[a]

	Millions of dwt for selected years				
Country	*2003*	*2000*	*1990*	*1980*	*1970*
Panama	186.4	158.9	62.2	39.0	8.9
Liberia	77.0	85.2	99.2	158.0	58.5
Bahamas	49.6	44.9	22.4		
Malta	42.6	46.7			
Cyprus	36.0	36.7	33.0	3.0	1.7
Bermuda	7.0	10.4	7.8		

[a] Vessels over 100 grt.

174. Apart from the major open-registry countries there have always been a number of smaller registers that were considered as open registers. And over the years, there have been changes in the list of open-registry countries. By the 1990s, Singapore, Oman and Somalia had been excluded, while Malta, Bermuda and Vanuatu were included. Today, the registers of Antigua and Barbuda, Belize, Bermuda, Cambodia, Cayman Islands, Costa Rica, Honduras, Mauritius, Sao Tome and Principe, Vanuatu

and Saint Vincent and the Grenadines are considered to be among those offering flag of convenience facilities.

175. The negligible ownership of nationals of open-registry countries in their fleets is apparent from table 2. Most of the entries are nil, with the exception of Cyprus, where national participation has nevertheless decreased considerably since 1990.

Table 2
National participation in open-registry fleets

	Percentage participation of nationals of open registers				
Country	*2003*	*2002*	*2001*	*1993*	*1991*
Panama	0.0	0.0	0.0	0.0	0.1
Liberia	0.0	0.0	0.0	0.0	0.0
Bahamas	0.0	0.0	0.5	0.4	0.2
Malta	0.0	0.1	0.1	..	2.1
Cyprus	2.6	2.3	2.4	8.4	12.1
Bermuda	0.0	0.0	0.0	0.0	0.0

176. Since the 1970s, the share of the open-registry fleet in the world fleet has more than doubled, passing from 21.6 to 47.2 per cent in 2003 (see table 3). The open-registry fleet increased by 5.6 times, more than double the increase of the world fleet, which over the same period rose by 2.5 times.

Table 3
World and open-registry fleets[a]

Date	*World fleet (million dwt)*	*Open-registry fleet countries (million dwt)*	*Percentage share of open-registry fleet countries*
1 July 1970	326.1	70.3	21.6
1 July 1980	682.8	212.6	31.1
1 July 1990	658.4	224.6	31.1
1 January 2000	799.0	384.7	48.1
1 January 2003	844.2	398.5	47.2

[a] Ships over 100 grt.

177. The structure of the open-registry fleet is indicated in table 4. Bulk carriers and tankers make up about three-quarters of the open-registry fleet.

Table 4
Structure of open-registry fleet by type of vessel

		Percentage share of open-registry fleet per type of vessel				
Date	*Total fleet (million dwt)*	*Tanker*	*Bulk carrier*	*General cargo*	*Container ships*	*Other ships*
1 January 2000	384.7	37.0	39.4	10.2	6.6	6.8
1 January 2003	398.5	37.1	41.1	8.3	9.2	4.2

178. The share of the world fleet by vessel type registered in open registries is indicated in table 5. The impact of open registers is greater in the bulk carrier market, where its share is above 50 per cent. The effect in the tanker and container markets is also significant. It is particularly in the container ship segment where open registries have made the most important inroads.

Table 5
World share of open-registry fleet by type of vessel

	Percentage share of world fleet by vessel type registered in open registries				
Year	*Tankers*	*Bulk carriers*	*General cargo*	*Container ships*	*Other vessels*
1970	26.4	24.1	7.6	1.0	3.6
1980	36.2	31.7	20.8	13.5	17.0
1990	41.6	33.2	26.2	21.1	24.2
2000	50.8	55.0	36.5	40.6	38.2
2003	48.6	54.6	34.1	44.4	28.3

179. As indicated in table 6, the average ages of the world and open-registry fleets have been similar, both for the overall fleet as well as for most types of vessels. However, the more favourable age structure in the bulk carrier and general cargo sectors has in recent years resulted in slightly younger fleets of open registries compared to the total world fleet.

Table 6

Age of world and open-registry fleets by type of vessel

Year	*Fleet*	*All ships*	*Tanker*	*Bulk carriers*	*General cargo*	*Container ships*	*Other ships*
1970	World	9.3	..	..	..	..	..
	Open-registry	9.8	..	..	..	..	..
1980[a]	World	9.9	8.9	9.1	13.2	..	..
	Open-registry	9.6	8.5	9.1	14.8	..	..
1990[a]	World	14.1	15.3	12.9	15.0	10.4	13.1
	Open-registry	15.1	16.3	14.6	14.3	9.3	12.9
2000[b]	World	14.5	15.0	13.6	17.3	11.0	15.6
	Open-registry	14.3	14.8	13.5	16.4	11.3	15.5
2003[b]	World	12.6	11.6	12.7	17.0	8.9	16.0
	Open-registry	12.1	11.6	12.0	15.8	9.1	16.0

[a] Estimated on the basis of grt at mid-year.

[b] Estimated on the basis of dwt at the beginning of the year.

Main maritime countries

180. The open-registry fleet is closely related to the fleet of the main maritime countries because many of these countries flag out their vessels to open registers. Table 7 lists the 35 most important world maritime countries, which accounted for about 94 per cent of the world fleet in 1990 and 2003. It also indicates the percentage of each country's fleet flagged out to any other country, including open-registry countries. In 2003, these 35 most important countries flagged out a total of 465.8 million dwt, of which 76.4 per cent corresponded to the six major open-registry countries.

181. From year to year there are minor changes in the countries listed, notably at the bottom of the table: Between 1 July 1989, the first time the list was prepared, and 1 July 1990, Indonesia replaced Romania; and between 1 January 2002 and 1 January 2003, Chile replaced the United Arab Emirates. Many of these countries have a substantial share of their fleets under foreign flags, while only a few maintain their fleets exclusively under the national flag.

Table7
Main maritime countries — rank and fleet size[a]

	Status at 1 January 2003			*Status at 1 July 1990*		
Country	*Rank (million dwt)*	*Per cent flagged out*	*Percentage of world fleet*	*Rank (million dwt)*	*Per cent flagged out*	*Percentage of world fleet*
Greece	1 (149.9)	70.1	19.5	1 (81.0)	56.5	13.8
Japan	2 (104.4)	87.1	13.6	2 (80.3)	56.1	13.5
Norway	3 (58.1)	53.3	7.6	4 (55.0)	33.2	9.2
China	4 (44.3)	48.8	5.8	8 (25.1)	19.9	4.2
United States	5 (42.5)	74.1	5.5	3 (55.1)	66.4	9.2
Germany	6 (40.7)	82.2	5.3	10 (12.7)	62.7	2.1
Hong Kong, China	7 (37.7)	65.0	4.9	5 (29.8)	88.8	5.0
Republic of Korea	8 (25.8)	64.6	3.4	9 (15.7)	27.0	2.6
Taiwan Province of China	9 (22.3)	71.7	2.9	14 (10.5)	36.1	1.8
Singapore	10 (19.4)	34.9	2.5	17 (7.5)	38.1	1.3
United Kingdom	11 (18.1)	56.5	2.4	7 (25.6)	68.9	4.3
Denmark	12 (16.5)	48.3	2.2	12 (11.5)	40.4	1.9
Russian Federation[b]	13 (16.2)	48.1	2.1	6 (29.3)	2.5	4.9
Italy	14 (12.2)	31.9	1.6	11 (11.7)	6.8	2.0
Saudi Arabia	15 (11.0)	91.6	1.4	..	..	..
India	16 (10.5)	10.8	1.4	13 (10.8)	4.1	1.8
Turkey	17 (8.9)	18.9	1.2	18 (6.6)	10.7	1.1
Netherlands	18 (7.2)	43.8	0.9	24 (5.5)	41.1	0.9
Iran, Islamic Republic of	19 (7.1)	3.2	0.9	16 (8.6)	0.3	1.5
Switzerland	20 (7.0)	90.1	0.9	28 (4.0)	88.4	0.7
Sweden	21 (6.9)	79.3	0.9	23 (5.5)	51.3	0.9
Malaysia	22 (6.6)	12.1	0.9	..	..	..
Brazil	23 (6.5)	31.4	0.9	15 (9.9)	3.6	1.7
Belgium	24 (6.2)	97.3	0.8	22 (5.7)	56.7	1.0
France	25 (6.0)	50.6	0.8	20 (6.1)	50.3	1.0
Canada	26 (5.9)	56.0	0.8	35 (2.4)	76.9	0.4
Philippines	27 (4.8)	15.5	0.6	29 (3.5)	5.4	0.6
Indonesia	28 (4.3)	25.3	0.6	34 (2.4)	35.1	0.4
Spain	29 (4.2)	96.6	0.6	25 (5.1)	4.8	0.9
Kuwait	30 (3.3)	0.0	0.4	26 (4.6)	38.6	0.8
Monaco	31 (3.1)	100.0	0.4	..	..	..
Australia	32 (2.8)	49.7	0.4	31 (2.9)	6.5	0.5
Cyprus	33 (2.7)	70.5	0.4	19 (6.1)	16.4	1.0
Croatia[c]	34 (2.3)	54.2	0.3	..	..	..
Chile	35 (2.2)	61.3	0.3	..	..	..
Yugoslavia	..	..	..	21 (6.0)	4.5	1.0
Poland	..	..	..	27 (4.2)	0.0	0.7
Finland	..	..	..	30 (3.4)	72.9	0.6
Argentina	..	..	..	32 (2.7)	10.2	0.5
Pakistan	..	..	..	33 (2.5)	80.1	0.4

[a] Ships over 1,000 grt.

[b] USSR in 1990.

[c] Under Yugoslavia in 1990.

F. Organization for Economic Cooperation and Development

(Prepared by the OECD secretariat)

182. The Maritime Transport Committee (MTC) of OECD has over the past several years produced several substantive reports relating to the problem of sub-standard shipping. The reports are summarized below. In addition, based on this body of work, member countries of the OECD MTC have approved two policy-related documents relating to the fight against sub-standard shipping: the Policy Statement on Substandard Shipping (2002) and the *Action Plan to Combat Substandard Shipping* (2000). These documents are reproduced in their entirety in subsections 2 and 3 below.

1. Recent Maritime Transport Committee reports on sub-standard shipping

2003

(a) Incentives for Quality Shipowners

183. The MTC identified the provision of incentives as one possible strategy to encourage quality shipowners to comply with international regulations and included this item in its Policy Statement on Substandard Shipping (see subsection 3 below). This paper investigates the concept of incentives for quality shipowners (but also other industry parties where relevant) to encourage them to maintain their standards and to enable them to better combat non-market competition from operators and users of sub-standard shipping.

184. Among the paper's findings are the following:

- Incentives are not intended to be subsidies. Therefore, by definition any incentives must be clearly and closely linked to sub-standard shipping and must have the effect of directly increasing the burdens and costs of sub-standard ship operators and users vis-à-vis those that are behaving responsibly.
- The economic benefits of any incentive must be accessible to quality ships only and should put sub-standard operators at a disadvantage. That quality must be measurable in an objective and transparent way, and that information must be readily available to every party involved.
- Ideally incentives should have a global, or at a minimum a regional, reach and this would certainly apply to such items as reduced insurance premiums. Others, such as differential harbour dues based on safety and environmental performance, may start at the local level and be subsequently extended to the regional or global level if considered successful.
- Other incentives can provide practical benefits for ships that demonstrate consistent compliance with international regulations, for example, a reduction in the number and perhaps intensity of port State control inspections on ships that have a good port State control record. All of these incentives can encourage owners and flag States to continue to improve quality.
- Certain incentives may provide benefits that are not easily measured (such as pride of certification, favourable images with insurers) but may be valuable nonetheless.

185. The paper also addresses disincentives, noting that a disincentive to substandard shipowners would be the equivalent of an incentive for those who are responsible. For example, if shipowners who were required to eliminate serious defects following statutory port checks also had to pay fees for a subsequent inspection and/or be subject to higher insurance premiums, the effect would be the same as giving a direct incentive to a good shipowner. In this case, the response of the affected shipowner might be to try to avoid that disincentive, or surcharge, by taking appropriate measures to conform to the safety and environmental regulations.

186. Based on these findings, the paper presents an outline of a possible incentive/disincentive scheme.

Report on Ownership and Control of Ships[68]

187. As part of the MTC work programme on maritime security, this paper examines how the beneficial (or ultimate) ownership and control of vessels can be cloaked by owners who for one reason or another wish to remain anonymous. It examines this issue by reference not only to specific ship registration procedures that exist in flag States, but also by examining more general corporate instruments that provide the principal means of effectively cloaking beneficial ownership.

188. The following are the report's key findings:

- It is very easy, and comparatively inexpensive, to establish a complex web of corporate entities to provide very effective cover to the identities of beneficial owners who do not want to be known.
- While some ship registers actively facilitate and promote anonymity for reluctant owners, the principal mechanisms are not the registers themselves, but the corporate mechanisms that are available to owners to cloak their identity.
- These corporate mechanisms are freely available in many jurisdictions, they are quite legal, and will provide a properly incorporated international business corporation that can transact business almost anywhere in the world (but generally not in the country of incorporation).
- From the perspective of the ship-registering process, the most important single feature that facilitates anonymity of individuals is the ability (quite sensible from a commercial perspective) of corporations to be registered as owners of vessels.
- The most common and effective mechanisms that can provide anonymity for beneficial owners include bearer shares, nominee shareholders, nominee directors, the use of intermediaries to act on owners' behalf and the failure of jurisdictions to provide for effective reporting requirements.
- The most common institutional devices used to create corporations are private limited companies, and international business corporations (IBCs). Other devices such as trusts, foundations and partnerships may also be used.

- Open registers, which by definition do not have any nationality requirements, are the easiest jurisdictions in which to register vessels that are covered by complex legal and corporate arrangements. The arrangements will almost certainly cover a number of international jurisdictions which would be much more difficult to untangle.

- While open registers would be (by choice) the most obvious targets for beneficial owners wishing to avoid revealing their identities, traditional registers, including those of OECD, may not be immune to use by anonymous beneficial owners. The additional complexity and risk of registering vessels in traditional registers would be compensated by the status and perhaps lesser attention directed towards vessels registered in these traditional registers.

- Some institutional arrangements, such as the remaining dependencies of former colonial Administrations (United Kingdom, France and the Netherlands, for example), as well as internal free trade arrangements (such as the European Union) may also provide opportunities, albeit complex and perhaps risky ones, for beneficial owners seeking anonymity to achieve their objectives.

(c) Cost Savings from Non-Compliance with International Environmental Regulations in the Maritime Sector[69]

189. This report examines the unfair commercial advantage afforded to sub-standard shipowners who fail to comply with international environmental regulations that apply to their ships. It builds on previous work undertaken by MTC on the cost savings unscrupulous shipowners and operators could realize by operating sub-standard ships.

190. Six major points stand out from the report's analysis:

- The first is that the "first order" costs of compliance on "average" ships are not that great. These costs include the capital, maintenance and repair costs for environmental equipment. They also include the costs for disposing of residual wastes not treated by on-board systems. Given average operating costs, these amounts can account for anywhere from 3.5 per cent to 6.5 per cent of the ship's operating costs. However, when margins are tight (e.g., when revenues are below the costs of financing and operating the ship), some owners and operators might be tempted to avoid these costs, especially as non-compliance with environmental regulations does not directly endanger ship, crew or cargo.

- Avoiding the first-order costs outlined above often results in equipment failure, meaning that no wastes can be treated on board. These wastes build up and, according to international regulations, must be discharged in port. While the costs for discharging these wastes vary, it remains an expensive option that many sub-standard operators might choose to forgo. Their savings are directly proportional to the wastes they produce (and dump illegally overboard).

- Generally, as ships age, their environmental compliance costs increase. These costs are exacerbated in a non-remunerative market.

- Penalties for non-compliance are effective if the risk of apprehension *and* prosecution for offenders is high and the level of the fine sufficiently elevated to make environmental compliance a more economical solution. The former relies on effective ocean surveillance, port State inspections and judicial processes, whereas the latter depends on the effective level of fines levied. A deterrent fine should at a very minimum be equal to the costs avoided through non-compliance. Despite recent increases in the level of penalties, it is not yet clear that the average fine levied on merchant ships for breaches of MARPOL conform to this definition.

- The advent of several necessary international instruments will most likely have an impact on the environment-related costs of shipping. This paper projects that these new costs will be anywhere from 1.5 to 3 orders of magnitude greater than current environmental compliance costs for average vessels. This highlights the need to be especially vigilant of sub-standard practices as the non-complying operator will be able to derive an even greater commercial advantage over the quality shipowner of the future.

- Heavy fuel oil sludges are the greatest source of illegal oil discharges from ships. As long as ships' engines run on these extremely "dirty" final products of the refining chain, ships will accumulate sludges that, according to international regulations, can only be disposed of in port reception facilities and/or burned in approved incinerators. Weaning the maritime sector from these fuels and towards cleaner sources of energy, much as what has been done for land transport, would go a long way towards reducing sludge production, oil discharges and, ultimately, the competitive advantage accruing to non-compliant vessels.

(d) Availability and Training of Seafarers[70]

191. Given that one of the primary causes of accidents at sea (including those that lead to pollution) is human error, the proper training of ships' crews is an essential element in assuring safe shipping. This report examines the impact of future developments in ship design and construction, technology and management and operational practice on the demand for ships' crews, both in terms of numbers and skill levels. The study also examines the effect that a shortage of OECD seafarers would have on the operation of national fleets and associated shore-based positions.

192. The study highlights that:

- There is a perception among most sectors of the industry that training of seafarers is inappropriate for present needs, let alone those of the future.

- There is still a high demand today for seafarers to have basic practical skills. In general, these are reported as absent, and not provided by colleges; in effect, there is too great an emphasis on theoretical knowledge.

- There appears to be a lack of cooperation and communication between training establishments and the wider shipping industry to identify new technologies, commercial problems, etc.

- Insufficient training is given in knowledge related to new equipment and technology. Vessels today are increasingly sophisticated but seafarers have limited technical understanding.
- Owners/operators and shore-based employers currently report a lack of management and IT skills among serving and ex-serving officers.

2001

(e) Report on Regulatory Issues in International Maritime Transport

193. This report focuses broadly on regulations governing international liner and bulk shipping, including UNCLOS, SOLAS and, to a lesser extent, MARPOL. The report discusses the web of rules and laws pertaining to these two segments of the shipping industry shipping, with an emphasis on regulations impacting commercial performance. As well as reviewing administrative regulations to judge whether they meet their intended objectives efficiently and effectively, the report examines all those aspects of economic regulations that restrict entry, exit, pricing and normal commercial practices, including different forms of business organization.

194. Many measures that apply to maritime transport services are not part of a regulatory framework, but constitute commercial practices of market operators. Both formal regulations and commercial practices (it being difficult to draw a clear distinction between them at times) have existed in the liner and bulk shipping sector for a long time, and have had a considerable impact on the development of these segments of the shipping industry.

195. The report recognizes that, in spite of a multitude of regulations and practices, the liner and bulk shipping sectors appear to be less regulated than many other service sectors, particularly other transport sectors. However, there is still scope for improvement in regulatory frameworks to improve economic efficiency to serve broad public interests, and desirable reform areas are pointed out in the report.

(f) Report on Ship Scrapping[71]

196. This report examines the correlation between vessel losses and their age, current ship scrapping and recycling practices and the implications of accelerated scrapping of older vessels.

197. The report establishes that there is a clear correlation between the age of vessels and losses at sea, and that a reduction in the numbers of those vessels would result in safer vessels and cleaner seas. However, an accelerated scrapping programme for certain ship categories could have serious implications for trade and shipbuilding.

198. The report also notes that most ship scrapping is concentrated in developing countries and that the industry has a poor safety record, causes pollution and generally affords its workers few basic rights.

to Users of Substandard Shipping[72]

This study seeks to identify and measure the direct costs incurred by the users -standard ships. In particular, the report aims to establish whether there are directly borne by the users of sub-standard shipping or whether there are ways costs can be made to trickle down to the industry generally and beyond, so that directly responsible for the use of sub-standard shipping rarely incur actual from their actions.

The report finds that the majority of parties that are directly involved in the use -standard shipping do not apparently incur significant costs that they need to themselves. The insurance industry provides coverage for most prospective ities. While wilful negligence or recklessness can invalidate insurance age, proving this can be difficult in practice.

Other important conclusions in the report are:

- The responsibility for eliminating defective ships has been placed almost entirely on vessel owners, flag States and classification societies. This has left other parties in the industry free of any effective liabilities that could encourage them to promote quality shipping at the expense of tonnage that fails to meet the requirements of legislation.
- Tanker owners in particular are protected against the consequences of large oil spills by the levels set by the Civil Liability Convention.
- There is a strong incentive for charterers and cargo owners to see the continued existence of low-quality ships as these facilitate the inexpensive movement of cargoes.
- The failure by some classification societies to enforce regulatory requirements has exacerbated the problem of sub-standard shipping, and their certifications have assisted shipowners in obtaining finance and insurance coverage for their vessels.
- Provided the role of banks is restricted to that of a passive lender, they are not liable for incidents involving vessels they finance.
- P&I Clubs and marine underwriters bear many of the costs of incidents associated with low-quality ships. Depressed insurance markets have made the insurance industry less selective of those whom they insure.
- There is a lack of transparency, and information is still relatively difficult to obtain.

Given the above findings, the report also leads to the conclusion that industry regulation is likely to be largely ineffective given the lack of a proper incentive cture.

1998

(h) Discussion Paper on Possible Actions to Combat Sub-standard Shipping by Involving Players Other than the Shipowner in the Shipping Market[73]

203. This paper first discusses a number of related issues to be borne in mind when considering the need to involve industry players other than shipowners in the fight against sub-standard practices. Briefly, the paper examines:

(a) Whether more regulation is likely to lead irresponsible operators to improve their standards;

(b) The recognition that a gap exists between the perceptions held by OECD Governments and some industry players of the commercial risks of sub-standard operations, and how to motivate sections of the industry to acknowledge that transparency of information can never be a substitute for a bias in favour of quality tonnage;

(c) Acknowledgement that sub-standard shipping cannot be dealt with simply through an all-encompassing review of legal liability.

204. The remainder of the paper addresses the potential roles of parties other than the shipowner in combating sub-standard shipping. It focuses in particular on financial institutions, insurance interests, classification societies and users of shipping services. It makes a number of suggestions on initiatives for further examination as to how these players might make a greater contribution to reinforce the importance of quality shipping, and thus drive sub-standard ships further towards the margins of the industry.

1996

(i) Report on the Competitive Advantages Obtained by Some Shipowners as a Result of Non-observance of Applicable International Rules and Standards[74]

205. This report assesses the competitive cost advantages which can be enjoyed by those owners who do not observe the fundamental maritime rules and standards relating to shipboard safety and environmental protection. It also examines the respective roles of the flag State and port State authorities, classification societies, chartering and marine insurance interests and the maritime labour unions in ensuring and monitoring international rules and standards, and identifies and discusses some of the possible solutions to the continuing problem of shipowner non-observance.

206. The principal findings of the report are:

- Shipowners are largely free to determine the operating standards of their vessels. Increasing financial pressures exerted on shipowners in recent years, due to cost inflation and overtonnaging in many sectors, have forced increasing numbers of shipowners onto a survival footing characterized by cost-saving initiatives and expenditure cut-backs on safety-related maintenance items, with the risk of violating international rules and standards.
- The freedom to determine operating standards exists because, in spite of more frequent and more rigorous ship inspections in recent years, there is considerable scope for shipowners to deliberately avoid compliance with

international rules and standards governing safety and pollution prevention in the shipping industry.

- In order to enjoy certain financial benefits, shipowners deliberately choose not to comply with the various safety and pollution measures laid down in international maritime rules and standards in two main ways: by undermaintaining vessels and equipment and by delaying necessary maintenance as long as possible.
- As the pressure on shipowners to reduce repair and maintenance expenditure has increased, so has the responsibility of the flag States, and classification societies acting on their behalf, to identify instances of sub-standard operation which pose a serious risk to safety and the environment. However, flag State administrations are frequently not in a position to fulfil their responsibilities in implementing international rules and standards either directly or indirectly through classification societies. No attempt has yet been made to standardize the way in which flag State inspections should be conducted, although the examination of different ship registers reveals similarities in their approaches.
- The findings of vessel inspections as conducted by various primary (flag States and classification societies acting on their behalf) and secondary (port States, charterers, insurers, maritime unions) bodies demonstrate, however, that there is still considerable room for improvement in terms of both the technical condition of vessels and ship-operating practice.
- Given the present legal framework, penalties applied to sub-standard vessels are, if they exist at all, relatively low compared to the advantages obtained from non-observance of international rules and standards.
- Lasting solutions for combating non-observance of agreed international rules and standards necessitate the coordinated cooperation of all participants in international shipping operations. The industry has an important policing role to play in coordination with flag States and classification societies acting on their behalf. Effectiveness is dependent on good cooperation among the various participants in maritime transport, including the harmonization of how inspections are conducted and, just as important, how corrective actions are followed up.
- Significant improvements in vessel operating standards cannot, however, be achieved through more diligent policing alone: shipowners and operators need to commit greater resources to preventing problems, especially through the effective implementation of the ISM Code. While the ISM Code will have a beneficial effect overall, it will not totally eradicate sub-standard practices as it does not address the root of the industry's problem, namely the lack of qualified, experienced and motivated seafarers.
- For the foreseeable future, the shipping industry will be characterized by a two-tier market in ship-operating standards. The upper tier comprises those owners who take a responsible attitude to safe ship operations and as a result enjoy access to most charterers and trade routes. The lower tier, by contrast, is made up of owners and operators who continue to circumvent or ignore accepted rules and regulations and who will be increasingly targeted in the future to undergo shipboard and office inspections and will be afforded limited access to certain trades and charterers.

1993

(j) Examination of Eventual Competitive Advantages of Vessels Registered under Second Registers Available in Certain OECD Member Countries

207. This report examines the various motivations for OECD shipowners to "flag out" from OECD registers and evaluates some of the competitive advantages accruing to the latter due to such a decision. The report finds that data are lacking to conclusively determine whether a competitive advantage is obtained by open-register shipowners. This finding served as a starting point for the two reports cited above dealing with the competitive advantages obtained by sub-standard shipowners due to non-compliance with safety and environmental regulations. The report also provides an analysis of the flagging-out process and the shipowner decision cycle.

2. Action Plan to Combat Sub-standard Shipping (1998)

The Action Plan, which provides for a series of industry based initiatives, is based on the outcome of a round table held in Paris on 30 September 1998 which was attended by senior representatives of major maritime-related industry groups, as well as government officials.

Industry participants at the round table gave strong support to the direct involvement of the maritime industry and endorsed the concept of greater industry self-regulation to avoid further domestic and international regulations to address this difficult problem.

For their part OECD Governments (and, through the MTC outreach programme, non-OECD Governments as well) will be encouraged to release the results of their port State control inspections, as well as their self-assessments of flag State performance through the International Maritime Organization when these became available.

The Action Plan also has the strong support of IMO, which welcomed the OECD initiative as a timely focus on the principle of the safety culture and a renewed emphasis on the effective implementation of existing international safety regulations.

Objective

The objective of the Action Plan is to encourage the adoption by industry of various initiatives to combat the incidence of sub-standard shipping, while acknowledging the leading role of the International Maritime Organization in respect of all technical questions related to safety and the protection of the maritime environment. The implementation of these initiatives should not involve any additional national or international regulations.

The initiatives

Role of the P&I Clubs

- Work through national administrations to consider further whether the possession of P&I membership might be accepted as constituting evidence of appropriate third-party coverage

- Support and encourage the decision of P&I Clubs that no vessel would be entered without ISM certification, as well as their future consideration of the proposal that ISM certification would be made a condition of coverage at the next renewal of vessels' coverage. It is anticipated that these initiatives would be uniformly applied among all clubs in the international groups

Shipper inspection schemes

- Discuss with the managers of existing shipper inspection schemes the scope for further integration and development of those schemes
- Encourage greater dialogue between the shipper scheme administrators, other organizations that generate similar information (such as the International Association of Classification Societies (IACS)) and national administrations in order to improve and facilitate the flow of information
- While acknowledging that because of its generally fragmented nature there is no single international body representing dry bulk shippers, bring together those dry bulk shippers that have in-house vetting arrangements, as well as potential new participants, to consider integrating those arrangements in order to provide a more extensive and effective coverage of their sector

Activities involving shipbrokers

- Discuss with shipbrokers how to enhance their role in avoiding the chartering of sub-standard vessels, including the possible introduction of a widespread code of best practice among shipbrokers
- Investigate how to enhance access to relevant, easily accessible and up-to-date information, especially from port State control inspections, to assist shipbrokers in action to combat sub-standard shipping

Activities by ship financiers

- Discuss with ship financiers the specific issue of the retention and use of their rights to access relevant information on ships financed by them, especially from classification societies, insurers and port State control authorities

Transparency of information

- Because of the prominence and importance given to the transparency of information and the fact that it involves all industry participants, the MTC will examine in 1999 specific ways in which relevant, up-to-date information, in compatible formats, can be made more accessible to all parties through:
  - Giving specific recognition to the fact that some information will have proprietary value and may therefore require special measures to facilitate access; and
  - In the interim, the Maritime Transport Committee establishing an Internet page on its web site, dedicated to sub-standard shipping, which will include links to bodies (such as IACS and port State control authorities) that provide relevant, publicly available information on sub-standard shipping

- Discuss with Governments and industry representatives the issue of legal liability, which may be created by the reasonable dissemination and use of information regarding sub-standard ships
- Discuss with OECD member countries (as well as with non-member countries through the MTC outreach programme) the prompt release of the results of their port State control inspections, as well as their self-assessments of flag State performance, the latter through IMO

Policy coordination among government bodies

- While this issue was not specifically discussed at the industry round table because of the incidence of at least two possible conflicts between competition policy requirements and activities which might potentially enhance maritime safety (involving marine insurance and P&I Clubs), the MTC will discuss with OECD member Governments possible ways of avoiding the unintentional hindrance of potential safety-related measures through possible conflict with other policies.

3. Policy Statement on Sub-standard Shipping by the Maritime Transport Committee of OECD (2002)

Preamble

The Maritime Transport Committee considers that sub-standard ships[75] carry with them a higher than normal risk of being involved in serious incidents, which impose large costs on communities, including loss of life and environmental damage. This is a situation which should not be tolerated by Governments, shipowners, shippers and the maritime industry generally.

While the MTC recognizes that the International Maritime Organization has prime competence for the regulation of shipping engaged in international trade in the areas of maritime safety, efficiency of navigation and the prevention and control of marine pollution from the point of view of the ship, there is much that can be done by Governments, international organizations and other players in the maritime industry to minimize the incidence of sub-standard shipping. This is a collective responsibility that requires efforts on everyone's part.

The Maritime Transport Committee therefore urges all flag and port States, shipowners, ship operators, shipping companies, shippers and other parties involved in the maritime sector to act effectively and conscientiously in their approach to sub-standard shipping, so that the ability of unscrupulous operators to offer sub-standard ships, and the opportunity for unscrupulous or gullible charterers and shippers to accept them, is severely limited or removed completely.

To further this objective, the Maritime Transport Committee and its member States have endorsed this Policy Statement to demonstrate the importance attached to the campaign to eliminate sub-standard shipping, and to highlight the actions that will be taken by the Committee and its member States in pursuance of that objective.

The MTC also invites all non-OECD States that share this concern to associate themselves with this Statement, in order to highlight to the operators and users of sub-standard ships the weight of international opinion that is ranged against them.

With this background firmly in mind, the Maritime Transport Committee and its member States endorse the following actions as reflecting their policy stance with respect to sub-standard shipping.

Flag States

- Flag States have the principal responsibility for identifying and dealing with sub-standard ships, and must take effective action to ensure that such ships cannot operate as long as they fail to meet international maritime conventions. Flag States should not accept new vessels on their registers without ensuring that they meet all international requirements.
- The Committee notes the large number of international maritime conventions that if effectively implemented would deal with the problem of sub-standard shipping. However, the Committee also notes with great concern that there is clear evidence that these conventions are often applied ineffectually, or inconsistently, and therefore urges all flag States to ensure that these conventions are effectively implemented in their jurisdictions.
- MTC members support IMO efforts to strengthen the implementation of international rules and standards, including action by IMO to review flag State performance.
- MTC members also support proposals to examine the extension of the charter of the IMO to give it the ability to actively review the performance of flag States, as well as the means of enforcing mandatory requirements.

Port States

- Port States can be effective in identifying sub-standard ships, and they are encouraged to communicate with the flag States concerned and freely exchange all available information among themselves. Port States should also ensure that existing internationally accepted rules and standards are rigorously and uniformly applied within their jurisdictions. For their part, MTC members will work actively through other forums, such as the various Port State control Memoranda of Understanding and regional Agreements, to encourage the widespread development of a safety culture and environmental conscience in as many jurisdictions as possible.
- Without discriminating in form or fact against vessels of any State, port States should apply sanctions (including detentions) and penalties that are adequate to discourage operators and users of sub-standard ships.

Classification societies

- Classification societies play an extremely important role in the process, and must perform their tasks effectively and with great diligence. Classification societies should ensure that their own standards are maintained. This applies especially to those under the IACS umbrella which could provide the standard against which other societies could be measured. MTC members encourage all classification societies to achieve a cohesive and uniform approach to ship inspections.

- If incident and detention statistics indicate that some classification societies are unable to ensure appropriately high standards, MTC members will consider establishing, maintaining and publicizing a list of those societies that are not applying adequate standards.
- MTC member countries will also consider the possibility of promoting an international licensing system, perhaps operated by IMO, aimed at ensuring that classification societies meet acceptable standards of performance.

Marine insurance

- The insurance industry provides a crucial financial safety net for commercial enterprises. At the same time (and probably as an unintended consequence) it also provides very effective coverage for sub-standard ships by allowing their risk to be spread over many players in the transportation chain, and ultimately to consumers. The insurance industry should therefore identify and target providers and users of sub-standard ships and should consider refraining from providing insurance coverage unless the deficiencies which make these ships unsafe are eliminated.
- In support of the above measure, MTC members, with the assistance of the insurance industry, will undertake a study of the international maritime insurance system to establish whether, without prejudice to potential victims, it is feasible to remove the coverage available to sub-standard shipping, while still maintaining the necessary risk-spreading coverage for the rest of the industry.
- Furthermore, MTC members will actively promote the introduction of compulsory insurance by IMO for all vessels, including provisions preventing insurers from paying fines for shipowners when the latter are prosecuted and found guilty of safety- or pollution-related offences.

Sub-standard crews

- While the MTC accepts that there is a clear place for crews that are low-cost and efficient, sub-standard crews or sub-standard crew conditions should not be tolerated. The MTC therefore strongly supports the strenuous efforts of IMO to enhance the training and qualifications of seafarers, as well as the intent and concepts behind the ILO maritime conventions, and welcomes the recent decision by ILO to revisit its maritime instruments in order to improve their relevance and encourage their wider ratification.

Incentives and rewards

- Incentive and reward programmes can be effective tools to help combat sub-standard shipping. It is noted by the MTC that some programmes currently exist and others are being developed. MTC members strongly endorse the acceleration and expansion of efforts to reward responsible shipowners and other industry parties through incentives and other recognition programmes aimed at maintaining high standards and to assist regulators in combating sub-standard ships. These programmes could encompass, for example, reduced classification fees, lower insurance premiums, fewer and less time-consuming port State inspections and, where this is possible, lower port charges.

- MTC members will work with industry to develop the concept of incentives for responsible shipowners and other parties in the industry, in order to encourage them to attain appropriate standards and to be able to better combat the non-market competition posed by operators and users of sub-standard shipping.

Information and publicity

- Good, as well as bad, publicity can be an important tool in combating sub-standard shipping. MTC members recognize the many efforts already under way, such as white lists, blacklists and detention lists, regularly and readily available over the Internet and in publications. MTC members will examine whether this information lends itself to further consolidation and release on the Committee's sub-standard shipping web site. MTC members will cooperate positively to use the Equasis information system and expand its content.
- Industry should help to avoid the development of unnecessary or excessive regulation; instead every effort should be made to facilitate the effective enforcement of existing regulations, for example through the free exchange of information and facilitating the identification of sub-standard ships and their operators and users.
- Also, the MTC urges all of its members to ensure that their maritime administrations freely and frequently make information on sub-standard shipping publicly available, inter alia, through Equasis.
- While the Committee recognizes that there may be some legal problems associated with identifying and publicizing those involved in the operation, use of or other involvement in sub-standard ships, this should not prevent the increasing use of such a powerful deterrent. MTC members will join with all other interested parties to address problems that may arise through the reasonable dissemination and use of such information, in good faith and in the public interest.

Legal matters

- MTC members will work actively, including through IMO, to consider some international means of facilitating proof of negligence not only for shipowners, but also for charterers, cargo interests, classification societies and others, where they have wilfully taken advantage of the existence of sub-standard shipping.

Conclusion

This Policy Statement represents a strong demonstration of the determination of the Maritime Transport Committee and its member States to ensure that continued high priority is given to the elimination of sub-standard shipping. This remains an issue of great concern and potentially of great cost, and pressure on those who would operate or use such ships must not be eased in any way.

The Policy Statement also highlights the strong view held by the MTC that if this problem is to be resolved, industry itself must play a major role in this effort. However, if this is going to succeed, responsible shipowners and users must be given every incentive to ensure that they will not be disadvantaged by acting responsibly. In other words, irresponsible operators and users must be detected and held accountable, and must not be permitted by the international system to profit unfairly from their actions. Those who operate or use sub-standard ships in contravention of internationally accepted rules and standards should face strong disincentives and penalties, and these should not be permitted to be simply added to the list of risks against which the perpetrators can already insure.

The MTC also considers that its 1998 Action Plan to Combat Sub-standard Shipping, adopted as a result of a round-table meeting with industry, can still make a considerable contribution, as it aims to strengthen industry involvement and attempts to promote effective exchanges of information between various industry players. Therefore, the Action Plan will continue to be implemented in support of this Policy Statement, but will now be treated as a longer-term activity, aimed at gradually strengthening action against sub-standard shipping.

Action by the MTC

A number of the actions mentioned above (for example, activities at IMO) can only be undertaken by MTC member Governments. However, consistent with the points contained in this Policy Statement, the Committee will itself:

- Work with industry to develop the concept of incentives for responsible shipowners and other parties in the industry, in order to encourage them to attain appropriate standards and to be able to better combat the non-market competition of operators and users of sub-standard shipping
- Consult with IMO on what economic, legal, policy and political avenues could be explored by MTC to support the activities of IMO itself to enhance compliance with existing international marine conventions, and help it to pursue new activities such as compulsory insurance
- With the assistance of industry, the MTC will agree on a mandate to undertake a study of the international maritime insurance system to establish whether scope exists to remove the coverage available to sub-standard shipping, while still maintaining the necessary risk-spreading coverage for the rest of the industry
- Examine whether existing information on sub-standard shipping from various sources lends itself to further consolidation and release on the Committee's sub-standard shipping web site, in order to expose operators and users of sub-standard shipping or promote responsible shipowners and other industry parties
- Continue with the implementation of those aspects of the 1998 Action Plan to Combat Sub-standard Shipping that are of interest to the various industry players, and which provide an incentive to sustain high-quality participation in shipping. These aspects are likely to involve enhancing the availability of information, and perhaps the construction of various detailed codes of best practice, aimed primarily at setting a benchmark against which individual enterprises can be measured. This may facilitate the identification of those who do not meet minimum acceptable standards.

III. Tables of flag State obligations

(Prepared by the United Nations Division for Ocean Affairs and the Law of the Sea)

Note on tables

208. Tables A and B provide information on flag State obligations contained in the United Nations Convention on the Law of the Sea and the United Nations Fish Stocks Agreement in the order in which they appear in these agreements. Table A lists the obligations of the flag State in UNCLOS in relation to navigation; conservation and management of marine living resources; the protection and preservation of the marine environment and conduct of marine scientific research; and monitoring, control and surveillance of fishing vessels on the high seas. Table B lists flag State responsibilities in relation to the conservation and management of straddling fish stocks and highly migratory fish stocks as they are embodied in the United Nations Fish Stocks Agreement.

209. Table C lists obligations of flag States organized by subject matter in a large number of international instruments, including UNCLOS. Where the entire instrument is relevant, only the title is given. Where there is a specific provision setting out a flag State obligation, the number of the article is given and the obligation indicated. For obligations in UNCLOS, only the article number is provided as the substance of the obligation is summarized in table A. Table C is not intended to be an exhaustive list. (The chosen order does not imply any priority among the cited instruments.)

Table A

United Nations Convention on the Law of the Sea (UNCLOS)

Part II
Territorial sea and contiguous zone

Section 3
Innocent passage in the territorial sea

Provision of UNCLOS	*Obligations of the flag State*
Article 18(2)	**Meaning of passage** Obligation of the flag State to require ships exercising the right of innocent passage in the territorial sea of the coastal State to proceed in a continuous and expeditious manner.
Article 19(1)	**Meaning of innocent passage** Obligation of the flag State to ensure that ships flying its flag exercise the right of innocent passage in conformity with the Convention and with other rules of international law.

Provision of UNCLOS	*Obligations of the flag State*
Article 20	**Submarine and other underwater vehicles** Obligation of the flag State to require submarines and other underwater vehicles exercising the right of innocent passage to navigate on the surface and to show their flag.
Article 21(4)	**Laws and regulations of the coastal State relating to innocent passage** Obligation of the flag State to require ships exercising the right of innocent passage through the territorial sea to comply with all laws and regulations of the coastal State relating to innocent passage and all generally accepted international regulations relating to the prevention of collisions at sea.
Article 22(2)	**Sea lanes and traffic separation schemes in the territorial sea** Obligation of the flag State to require tankers, nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances or materials, when exercising the right of innocent passage through the territorial sea, to confine their passage to designated or prescribed sea lanes and traffic separation schemes when required to do so by the coastal State.
Article 23	**Foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances** Obligation of the flag State to require nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances through the territorial sea in innocent passage to carry documents and observe special precautionary measures established for such ships by international agreements.

Part III
Straits used for international navigation

Section 2
Transit passage

Provision of UNCLOS	*Obligations of the flag State*
Article 39(1)	**Duties of ships and aircraft during transit passage** Obligation of the flag State to require ships and aircraft, while exercising the right of transit passage: (a) To proceed without delay through or over the strait; refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering the strait, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations; refrain from any activities other than those incidental to their normal modes of continuous and expeditious transit unless rendered necessary by force majeure or by distress; (b) To comply with other relevant provisions of Part III of UNCLOS governing straits used for international navigation.

Provision of UNCLOS	*Obligations of the flag State*
Article 39(2)	**Obligation of the flag State to require ships exercising the right of transit passage:** (a) To comply with generally accepted international regulations, procedures and practices for safety at sea, including the International Regulations for Preventing Collisions at Sea; (b) To comply with generally accepted international regulations, procedures and practices for the prevention, reduction and control of pollution from ships.
Article 40	**Research and survey activities** Obligation of the flag State to forbid ships, including marine scientific research and hydrographic survey ships, from carrying out any research or survey activities during transit passage without the prior authorization of the States bordering straits.
Article 41(7)	**Sea lanes and traffic separation schemes in straits used for international navigation** Obligation of the flag State to require ships in transit passage to respect applicable sea lanes and traffic separation schemes for navigation in straits that may be established by States bordering straits where they are necessary to promote the safe passage of ships.
Article 42(4)	**Laws and regulations of States bordering straits relating to transit passage** Obligation of the flag State to require ships exercising the right of transit passage to comply with laws and regulations relating to transit passage through straits that may be adopted by States bordering straits in respect of all or any of the following: (a) The safety of navigation and the regulation of maritime traffic, as provided in article 41; (b) The prevention, reduction and control of pollution, by giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the straits; (c) With respect to fishing vessels, the prevention of fishing, including the stowage of fishing gear; The loading and unloading of any commodity, currency or person in contravention of customs, fiscal, immigration or sanitary laws and regulations of States bordering straits.
Article 42(5)	Obligation of the flag State of a ship entitled to sovereign immunity which acts in a manner contrary to laws and regulations of States bordering straits relating to transit passage or other provisions of Part III of UNCLOS governing straits used for international navigation to bear international responsibility for any loss or damage which results to States bordering straits.
Article 43	**Navigational and safety aids and other improvements and the prevention, reduction and control of pollution** Obligation of user flag States to cooperate by agreement with States bordering a strait: (a) In the establishment and maintenance in a strait of necessary navigational and safety aids or other improvements in aid of international navigation; and (b) For the prevention, reduction and control of pollution from ships.

Part IV
Archipelagic States

Provision of UNCLOS	*Obligations of the flag State*
Article 53(11)	**Right of archipelagic sea lanes passage** Obligation of the flag State to ensure that ships in archipelagic sea lanes passage respect applicable sea lanes and traffic separation schemes established by an archipelagic State in accordance with the provisions of this article.
Article 54	**Duties of ships and aircraft during their passage, research and survey activities, duties of the archipelagic State and laws and regulations of the archipelagic State relating to archipelagic sea lanes passage** Obligations of the flag State set out in articles 39, 40, 42 and 44 apply mutatis mutandis to archipelagic sea lanes passage.

Part V
Exclusive economic zone

Provision of UNCLOS	*Obligations of the flag State*
Article 58(3)	**Rights and duties of other States in the exclusive economic zone** Obligation of the flag State in exercising its rights and performing its duties under the Convention in the exclusive economic zone to have due regard to the rights and duties of the coastal State and to comply with the laws and regulations adopted by the coastal State in accordance with the provisions of the Convention and other rules of international law insofar as they are not incompatible with Part V of UNCLOS.
Article 60(6)	**Artificial islands, installations and structures in the exclusive economic zone** Obligation of the flag State to respect the safety zones established by the coastal State around artificial islands, installations and structures and to comply with generally accepted international standards regarding navigation in the vicinity of artificial islands, installations and structures and safety zones.
Article 61(5)	**Conservation of the living resources** Obligation of the flag State of vessels allowed to fish in the exclusive economic zone to contribute and exchange on a regular basis through competent organizations, whether subregional, regional or global, where appropriate, available scientific information, catch and fishing efforts statistics and other data relevant to the conservation of fish stocks.

of UNCLOS *Obligations of the flag State*

62(4) **Utilization of the living resources**

Obligation of the flag State to ensure that its vessels fishing in the exclusive economic zone of another State comply with the conservation measures and with other terms and conditions established in the laws and regulations of the coastal State relating, inter alia, to the following:

(a) Licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, which, in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry;

(b) Determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or groups of stocks or catch per vessel over a period of time or to the catch by nationals of any State during a specified period;

(c) Regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used;

(d) Fixing the age and size of fish and other species that may be caught;

(e) Specifying information required of fishing vessels, including catch and effort statistics and vessel position reports;

(f) Requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programmes and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data;

(g) The placing of observers or trainees on board such vessels by the coastal State;

(h) The landing of all or any of the catch by such vessels in the ports of the coastal State;

(i) Terms and conditions relating to joint ventures or other cooperative arrangements;

(j) Requirements for the training of personnel and the transfer of fisheries technology, including enhancement of the coastal State's capability of undertaking fisheries research;

(k) Enforcement procedures.

e 63(2) **Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it**

Obligation of the flag State which fishes in the adjacent area for stocks occurring both within the exclusive economic zone and in an area beyond and adjacent to it (straddling fish stocks) to seek, either directly or through appropriate subregional or regional organizations, to agree with the coastal State upon the measures necessary for the conservation of these stocks in the adjacent area.

vision of UNCLOS	*Obligations of the flag State*
ticle 64	**Highly migratory species** Obligation of the flag State whose nationals fish in the region for the highly migratory species listed in Annex I to cooperate directly or through appropriate international organizations with the coastal State with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the flag State that harvests these species in the region shall cooperate with the coastal State to establish such an organization and participate in its work.
ticle 65	**Marine mammals** Obligation of States, including flag States, to cooperate with a view to the conservation of marine mammals and, in the case of cetaceans in particular, to work through the appropriate international organizations for their conservation, management and study.
ticle 66(3)(a)	**Anadromous stocks** Obligation of the flag State allowed to fish for anadromous stocks beyond the outer limits of the exclusive economic zone to maintain consultations with a view to achieving agreement on the terms and conditions of such fishing, giving due regard to the conservation requirements and the needs of the State of origin in respect of such stocks.

Part VI
Continental shelf

vision of UNCLOS	*Obligations of the flag State*
ticle 79(5)	**Submarine cables and pipelines on the continental shelf** Obligation of the flag State to ensure that its ships laying cables or pipelines have due regard to submarine cables or pipelines already in position, in particular, the obligation not to prejudice the possibilities of repairing existing ones.

Part VII
High seas

Section 1
General provisions

vision of UNCLOS	*Obligations of the flag State*
rticle 87(2)	**Freedom of the high seas** Obligation of the flag State to have due regard for the interests of other States while exercising the freedoms of the high seas and the rights under the Convention with respect to activities in the Area.

Provision of UNCLOS	*Obligations of the flag State*
Article 88	**Reservation of the high seas for peaceful purposes** Obligation of the flag State to reserve the high seas for peaceful purposes.
Article 91(1)	**Nationality of ships** Obligation of the flag State to fix the conditions for the grant of its nationality to ships, for the registration of ships in its territories, for the right to fly its flag and to have a genuine link with ships flying its flag.
Article 91(2)	Obligation of the flag State to issue to ships to which it has granted the right to fly its flag documents to that effect.
Article 94	**Duties of the flag State** 1. Obligation of the flag State to effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag. 2. In particular every State shall: (a) Maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and (b) Assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship. 3. Obligation of the flag State to take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to: (a) The construction, equipment and seaworthiness of ships; (b) The manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments; (c) The use of signals, the maintenance of communications and the prevention of collisions. 4. Such measures shall include those necessary to ensure: (a) That each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as appropriate for the safe navigation of the ship; (b) That each ship is in the charge of a master and officers who possess appropriate qualifications, in particular seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship; (c) That the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.

5. In taking the measures called for in paragraphs 3 and 4, each flag State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.

6. Obligation of the flag State to investigate the report of a State which has clear grounds to believe that proper jurisdiction and control with respect to a ship flying its flag have not been exercised and, if appropriate, to take any action necessary to remedy the situation.

7. Obligation of the flag State to cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships, installations of another State or to the marine environment. The flag State and the other State shall cooperate in the conduct of any inquiry held by that other State into any such casualty or incident of navigation.

Article 98(1) **Duty to render assistance**

Obligation of the flag State to require the master of a ship flying its flag, insofar as he can do so without serious danger to the ship, the crew or the passengers:

(a) To render assistance to any person found at sea in danger of being lost;

(b) To proceed with all possible speed to the rescue of a person in distress, if informed of their need of assistance, insofar as such action may reasonably be expected of him;

(c) After a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which he will call.

Article 99 **Prohibition of the transport of slaves**

Obligation of the flag State to take effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall ipso facto be free.

Article 100 **Duty to cooperate in the repression of piracy**

Obligation of the flag State to cooperate with other States to the fullest extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

Article 108(1) **Illicit traffic in narcotic drugs or psychotropic substances**

Obligation of the flag State to cooperate with other States in the suppression of illicit traffic in narcotic drugs or psychotropic substances engaged in by ships on the high seas contrary to international conventions.

Article 109(1) **Unauthorized broadcasting from the high seas**

Obligation of the flag State to cooperate with other States in the suppression of unauthorized broadcasting from the high seas.

Provision of UNCLOS	*Obligations of the flag State*
Article 113	**Breaking or injury of a submarine cable or pipeline** Obligation of the flag State to adopt laws and regulations necessary to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking and injury of a submarine pipeline or high-voltage power cable, shall be a punishable offence. This provision shall apply also to conduct calculated or likely to result in such breaking or injury. However, it shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

Section 2
Conservation and management of the living resources of the high seas

Provision of UNCLOS	*Obligations of the flag State*
Article 116	**Right to fish on the high seas** Obligation of the flag State whose nationals fish on the high seas to respect: (a) Its treaty obligations; (b) The rights and duties as well as the interests of coastal States provided for, inter alia, in article 63, paragraph 2, and articles 64 to 67; and (c) The provisions of section 2.
Article 117	**Duty of States to adopt with respect to their nationals measures for the conservation of the living resources of the high seas** Obligation of the flag State to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.
Article 118	**Cooperation of States in the conservation and management of living resources** Obligation of flag States to cooperate with each other in the conservation and management of living resources in the areas of the high seas. Flag States whose nationals exploit identical living resources, or different living resources in the same area, shall enter into negotiations with a view to taking the measures necessary for the conservation of the living resources concerned. They shall, as appropriate, cooperate to establish subregional or regional fisheries organizations to this end.

Provision of UNCLOS	*Obligations of the flag State*
Article 119	**Conservation of living resources of the high seas** 1. Obligation of flag States, in determining the allowable catch and establishing other conservation measures for the living resources on the high seas: (a) To take measures which are designed, on the best scientific evidence available to the flag States concerned, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global; (b) To take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened. 2. Obligation of flag States to contribute and exchange available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned. 3. Obligation of flag States concerned to ensure that conservation measures and their implementation do not discriminate in form or in fact against the fishermen of any State.
Article 120	**Marine mammals** Article 65 also applies to the conservation and management of marine mammals in the high seas.

Part XIII
Protection and preservation of the marine environment

Section 1
General provisions

Provision of UNCLOS	*Obligations of the flag State*
Article 192	**General obligation** Obligation of States, including flag States, to protect and preserve the marine environment.
Article 194	**Measures to prevent, reduce and control pollution of the marine environment** 1. Obligation of States, including flag States, to take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and to endeavour to harmonize their policies in this connection.

Provision of UNCLOS	*Obligations of the flag State*
	2. Obligation of States, including flag States, to take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention. 3. The measures taken pursuant to this Part shall deal with all sources of pollution of the marine environment. These measures shall include, inter alia, those designed to minimize to the fullest possible extent: (a) The release of toxic, harmful or noxious substances, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping; (b) Pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels; (c) Pollution from installations and devices used in exploration or exploitation of the natural resources of the seabed and subsoil, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices; (d) Pollution from other installations and devices operating in the marine environment, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices. 4. In taking measures to prevent, reduce or control pollution of the marine environment, States, including flag States, shall refrain from unjustifiable interference with activities carried out by other States in the exercise of their rights and in pursuance of their duties in conformity with this Convention. 5. The measures taken in accordance with this Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.
Article 195	**Duty not to transfer damage or hazards or transform one type of pollution into another** Obligation of States, including flag States, to act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another, in taking measures to prevent, reduce and control pollution of the marine environment.
Article 196(1)	**Use of technologies or introduction of alien or new species** Obligation of States, including flag States, to take all measures necessary to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction or control, or the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant and harmful changes thereto.

Section 2
Global and regional cooperation

Provision of UNCLOS	*Obligations of the flag State*
Article 197	**Cooperation on a global or regional basis** Obligation of States, including flag States, to cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.
Article 198	**Notification of imminent or actual damage** Obligation of a State, including a flag State, to immediately notify other States it deems likely to be affected by such damage, as well as the competent international organizations, when it becomes aware of cases in which the marine environment is in imminent danger of being damaged or has been damaged by pollution.
Article 199	**Contingency plans against pollution** In the cases referred to in article 198, obligation of States, including flag States, in the area affected, in accordance with their capabilities, and the competent international organizations to cooperate, to the extent possible, in eliminating the effects of pollution and preventing or minimizing the damage. To this end, States shall jointly develop and promote contingency plans for responding to pollution incidents in the marine environment.
Article 200	**Studies, research programmes and exchange of information and data** Obligation of States, including flag States, to cooperate, directly or through competent international organizations, for the purpose of promoting studies, undertaking programmes of scientific research and encouraging the exchange of information and data acquired about pollution of the marine environment. They shall endeavour to participate actively in regional and global programmes to acquire knowledge for the assessment of the nature and extent of pollution, exposure to it, and its pathways, risks and remedies.
Article 201	**Scientific criteria for regulations** In the light of the information and data acquired pursuant to article 200, obligation of States, including flag States, to cooperate, directly or through competent international organizations, in establishing appropriate scientific criteria for the formulation and elaboration of rules, standards and recommended practices and procedures for the prevention, reduction and control of pollution of the marine environment.

Section 4
Monitoring and environmental assessment

Provision of UNCLOS	*Obligations of the flag State*
Article 204(2)	**Monitoring risks or effects of pollution** Obligation of States, including flag States, to keep under surveillance the effects of any activities which they permit or in which they engage in order to determine whether those activities are likely to pollute the marine environment.
Article 205	**Publication of reports** Obligation of States, including flag States, to publish reports of the results obtained pursuant to article 204 or provide such reports at appropriate intervals to the competent international organizations, which should make them available to all States.
Article 206	**Assessment of potential effects of activities** Obligation of States, including flag States, as far as practicable, to assess the potential effects of planned activities under their jurisdiction or control on the marine environment and to communicate reports of the results of such assessments in the manner provided in article 205, when they have reasonable grounds for believing that such activities may cause substantial pollution of or significant and harmful changes to the marine environment.

Section 5
International rules and national legislation to prevent, reduce and control pollution of the marine environment

Provision of UNCLOS	*Obligations of the flag State*
Article 209(2)	**Pollution from activities in the Area** Obligation of the flag State to adopt laws and regulations to prevent, reduce and control pollution of the marine environment from activities in the Area undertaken by vessels, installations, structures and other devices flying its flag or of its registry or operating under its authority, as the case may be, subject to the relevant provisions of this section. The requirements of such laws and regulations shall be no less effective than the international rules, regulations and procedures referred to in paragraph 1.[76]
Article 210(5)	**Pollution by dumping** Obligation of the flag State not to carry out dumping within the territorial sea and the exclusive economic zone or onto the continental shelf without the express prior approval of the coastal State, which has the right to permit, regulate and control such dumping after due consideration of the matter with other States which by reason of their geographical situation may be adversely affected thereby.

Provision of UNCLOS	*Obligations of the flag State*
Article 211(1)	**Pollution from vessels** Obligation of States, including flag States, acting through the competent international organization or general diplomatic conference, to establish international rules and standards to prevent, reduce and control pollution of the marine environment from vessels and promote the adoption, in the same manner, wherever appropriate, of routing systems designed to minimize the threat of accidents which might cause pollution of the marine environment, including the coastline, and pollution damage to the related interests of coastal States. Such rules and standards shall, in the same manner, be re-examined from time to time as necessary.
Article 211(2)	**Pollution from vessels** Obligation of the flag State to adopt laws and regulations for the prevention, reduction and control of pollution of the marine environment from vessels flying its flag or of its registry, which shall at least have the same effect as that of generally accepted international rules and standards established through the competent international organization or general diplomatic conference.
Article 211(3)	Obligation of the flag State to require the master of a vessel flying its flag or of its registry, when navigating within the territorial sea of a State participating in cooperative arrangements with other States that establish particular requirements for the prevention, reduction and control of pollution of the marine environment as a condition for the entry of foreign vessels into its ports or internal waters or for a call at its offshore terminals, to furnish, upon request of that State, information as to whether it is proceeding to a State of the same region participating in such cooperative arrangements and, if so, to indicate whether it complies with the port entry requirements of that State.
Article 212(1)	**Pollution from or through the atmosphere** Obligation of the flag State or the State of registry to adopt laws and regulations to prevent, reduce and control pollution of the marine environment from or through the atmosphere, applicable to vessels flying its flag or vessels of its registry or aircraft, taking into account internationally agreed rules, standards and recommended practices and procedures.

Section 6
Enforcement

Provision of UNCLOS	*Obligations of the flag State*
Article 216(1)(b)	**Enforcement with respect to pollution by dumping** Obligation of the flag State to enforce laws and regulations adopted in accordance with this Convention and applicable international rules and standards established through competent international organizations or diplomatic conference for the prevention, reduction and control of pollution of the marine environment by dumping with regard to vessels flying its flag or vessels or aircraft of its registry.

Article 217 **Enforcement by flag States**

Obligation of States to ensure compliance by vessels flying their flag or of their registry with applicable international rules and standards, established through the competent international organization or general diplomatic conference, and with their laws and regulations adopted in accordance with this Convention for the prevention, reduction and control of pollution of the marine environment from vessels and accordingly to adopt laws and regulations and take other measures necessary for their implementation. Flag States shall provide for the effective enforcement of such rules, standards, laws and regulations, irrespective of where a violation occurs.

2. Obligation of States, in particular, to take appropriate measures in order to ensure that vessels flying their flag or of their registry are prohibited from sailing until they can proceed to sea in compliance with the requirements of the international rules and standards referred to in paragraph 1, including requirements in respect of the design, construction, equipment and manning of vessels.

3. Obligation of States to ensure that vessels flying their flag or of their registry carry on board certificates required by and issued pursuant to the international rules and standards referred to in paragraph 1. Obligation of States to ensure that vessels flying their flag are periodically inspected in order to verify that such certificates are in conformity with the actual condition of the vessels. These certificates shall be accepted by other States as evidence of the condition of the vessels and shall be regarded as having the same force as certificates issued by them, unless there are clear grounds for believing that the condition of the vessel does not correspond substantially with the particulars of the certificates.

4. If a vessel commits a violation of the rules and standards established through the competent international organization or general diplomatic conference, the flag State, without prejudice to articles 218, 220 and 228, shall provide for an immediate investigation and where appropriate institute proceedings in respect of the alleged violation irrespective of where the violation occurred or where the pollution caused by such violation occurred or was spotted.

5. Obligation of all States, including flag States, to cooperate with flag States conducting an investigation of a violation by their vessels upon request.

6. Flag States shall, at the written request of any State, investigate any violation alleged to have been committed by vessels flying their flag. If satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, flag States shall without delay institute such proceedings in accordance with their laws.

7. Flag States shall promptly inform the requesting State and the competent international organization of the action taken and its outcome. Such information shall be available to all States.

8. Penalties provided for by the laws and regulations of States for vessels flying their flag shall be adequate in severity to discourage violations wherever they occur.

Provision of UNCLOS	*Obligations of the flag State*
Article 220(4)	**Enforcement by coastal States** Obligation of the flag State to adopt laws and regulations and take other measures so that a vessel flying its flag complies with requests for information by the coastal State regarding its identity and port of registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred.
Article 222	**Enforcement with respect to pollution from or through the atmosphere** Obligation of the flag State to enforce, with regard to vessels flying its flag or vessels of its registry, its laws and regulations adopted in accordance with article 212, paragraph 1, and with other provisions of this Convention and to adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment from or through the atmosphere, in conformity with all relevant international rules and standards.

Section 7
Safeguards

Provision of UNCLOS	*Obligations of the flag State*
Article 225	**Duty to avoid adverse consequences in the exercise of the powers of enforcement** Obligation of the flag State of warships, or other ships clearly marked and identifiable as being on government service and authorized to that effect, not to endanger the safety of navigation or otherwise create any hazard to a vessel, or bring it to an unsafe port or anchorage, or expose the marine environment to an unreasonable risk, when it exercises under the Convention its powers of enforcement against foreign vessels.
Article 228(1)	**Suspension and restrictions on institution of proceedings** Obligation of the flag State to make available in due course to the State previously instituting proceedings a full dossier of the case and the records of the proceedings whenever the flag State has requested the suspension of proceedings in accordance with this article.

Section 9
Responsibility and liability

Provision of UNCLOS	*Obligations of the flag State*
Article 235(2)	**Responsibility and liability** Obligation of States, including flag States, to ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction.

Provision of UNCLOS	*Obligations of the flag State*
Article 235(3)	Obligation of States, including flag States, to cooperate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for the payment of adequate compensation, such as compulsory insurance or compensation funds.

Section 10
Sovereign immunity

Provision of UNCLOS	*Obligations of the flag State*
Article 236	**Sovereign immunity** The provisions of this Convention regarding the protection and preservation of the marine environment do not apply to any warship, naval auxiliary or other vessels owned or operated by a State and used, for the time being, only on government non-commercial service. However, each flag State has an obligation to ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels owned or operated by it, that such vessels act in a manner consistent, so far as is reasonable and practicable, with this Convention.

Part XIII
Marine scientific research

Section 3
Conduct and promotion of marine scientific research

Provision of UNCLOS	*Obligations of the flag State*
Article 245	**Marine scientific research in the territorial sea** Obligation of the flag State to conduct marine scientific research in the territorial sea of a coastal State only with the express consent of and under the conditions set forth by such a State.
Article 246(2)	**Marine scientific research in the exclusive economic zone and on the continental shelf** Obligation of the flag State to conduct marine scientific research in the exclusive economic zone of a coastal State only with the consent of such State.
Article 246(8)	Obligation of the flag State conducting marine scientific research activities in the exclusive economic zone and on the continental shelf not to unjustifiably interfere with activities undertaken by the coastal State in the exercise of its sovereign rights and jurisdiction provided for in the Convention.

Provision of UNCLOS | *Obligations of the flag State*

Article 248

Duty to provide information to the coastal State

Obligation of the flag State and the competent international organization which intend to undertake marine scientific research in the exclusive economic zone or on the continental shelf of a coastal State to provide that State, not less than six months in advance of the expected starting date of the marine scientific research project, with a full description of:

(a) The nature and objectives of the project;

(b) The method and means to be used, including name, tonnage, type and class of vessels and a description of the scientific equipment;

(c) The precise geographical areas in which the project is to be conducted;

(d) The expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal, as appropriate;

(e) The name of the sponsoring institution, its director and the person in charge of the project; and

(f) The extent to which it is considered that the coastal State should be able to participate or to be represented in the project.

Article 249

Duty to comply with certain conditions

1. Obligation of the flag State and the competent international organization, when undertaking marine scientific research in the exclusive economic zone or on the continental shelf of a coastal State, to comply with the following conditions:

   (a) To ensure the right of the coastal State, if it so desires, to participate or be represented in the marine scientific research project, especially on board research vessels and other craft or scientific research installations, when practicable, without payment of any remuneration to the scientists of the coastal State and without obligation to contribute towards the costs of the project;

   (b) To provide the coastal State, at its request, with preliminary reports, as soon as practicable, and with the final results and conclusions after the completion of the research;

   (c) To undertake to provide access for the coastal State, at its request, to all data and samples derived from the marine scientific research project and likewise to furnish it with data which may be copied and samples which may be divided without detriment to their scientific value;

   (d) If requested, to provide the coastal State with an assessment of such data, samples and research results or provide assistance in their assessment or interpretation;

   (e) To ensure, subject to paragraph 2, that the research results are made internationally available through appropriate national or international channels, as soon as practicable;

(f) To inform the coastal State immediately of any major change in the research programme;

(g) Unless otherwise agreed, to remove the scientific research installations or equipment once the research is completed.

2. Obligation of the flag State to also comply with the conditions established by the laws and regulations of the coastal State for the exercise of its discretion to grant or withhold consent pursuant to article 246, paragraph 5, including requiring prior agreement for making internationally available the research results of a project of direct significance for the exploration and exploitation of natural resources.

0 **Communications concerning marine scientific research projects**

Obligation of the flag State to engage in communications concerning the marine scientific research projects through appropriate official channels, unless otherwise agreed.

3(4) **Suspension or cessation of marine scientific research activities**

Obligation of the flag State or the competent international organization authorized to conduct marine scientific research activities in the exclusive economic zone or on the continental shelf of the coastal State to terminate the research activities, following notification by such a State of its decision to order suspension or cessation of such activities.

4 **Rights of neighbouring landlocked and geographically disadvantaged States**

1. Obligation of the flag State and the competent international organization which have submitted to a coastal State a project to undertake marine scientific research referred to in article 246, paragraph 3, to give notice to the neighbouring landlocked and geographically disadvantaged States of the proposed research project, and to notify the coastal State thereof.

2. Obligation of the flag State and the competent international organization undertaking the proposed marine scientific research project to provide to the neighbouring landlocked and geographically disadvantaged States, at their request and when appropriate, relevant information as specified in article 248 and article 249, paragraph 1(f), after the consent has been given for such a project by the coastal State concerned, in accordance with article 246 and other relevant provisions of this Convention.

3. Obligation of the flag State or the competent international organization conducting the marine scientific research to give the opportunity to the neighbouring landlocked and geographically disadvantaged States referred to above, at their request, to participate, whenever feasible, in the proposed marine scientific research project through qualified experts appointed by them and not objected to by the coastal State, in accordance with the conditions agreed for the project, in conformity with the provisions of this Convention, between the coastal State concerned and the State or the competent international organization conducting the marine scientific research.

Provision of UNCLOS	*Obligations of the flag State*
	4. Obligation of the flag State and the competent international organization referred to in paragraph 1 to provide to the above-mentioned landlocked and geographically disadvantaged States, at their request, the information and assistance specified in article 249, paragraph 1(d), subject to the provisions of article 249, paragraph 2.

Section 4
Scientific research installations or equipment in the marine environment

Provision of UNCLOS	*Obligations of the flag State*
Article 260	**Safety zones** Obligation of all flag States to ensure that their vessels respect safety zones of a reasonable breadth not exceeding a distance of 500 metres that may be created around scientific research installations in accordance with the relevant provisions of this Convention.
Article 261	**Non-interference with shipping routes** Obligation of the flag State to ensure that the deployment and use of any type of scientific research installations or equipment do not constitute an obstacle to established international shipping routes.
Article 262	**Identification markings and warning signals** Obligation of the flag State to ensure that the installations or equipment referred to in this section bear identification markings indicating the State of registry or the international organization to which they belong and have adequate internationally agreed warning signals to ensure safety at sea and the safety of air navigation, taking into account the rules and standards established by competent international organizations.

Section 5
Responsibility and liability

Provision of UNCLOS	*Obligations of the flag State*
Article 263	**Responsibility and liability** 2. Obligation of the flag State and the competent international organization to provide compensation for damage resulting from measures taken in contravention of this Convention in respect of marine scientific research conducted by other States, their natural or juridical persons or by competent international organizations. 3. Obligation of the flag State and the competent international organization to bear responsibility and liability pursuant to article 235 for damage caused by pollution of the marine environment arising out of marine scientific research undertaken by them or on their behalf.

Section 6
Settlement of disputes and interim measures

Provision of UNCLOS	*Obligations of the flag State*
Article 265	**Interim measures** Obligation of the flag State or the competent international organization authorized to conduct a marine scientific research project not to allow research activities to commence or continue without the express consent of the coastal State concerned, pending settlement of a dispute in accordance with Part XV, sections 2 and 3.

Table B

Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (United Nations Fish Stocks Agreement)

Part II
Conservation and management of straddling fish stocks and highly migratory fish stocks

Provision of UNCLOS	*Obligations of the flag State*
Article 5	**General principles** Obligation of the flag State, in giving effect to its duty to cooperate with the coastal State for the conservation and management of straddling fish stocks and highly migratory fish stocks, to adopt measures that: (a) Ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimum utilization; (b) Are based on the best scientific evidence available; (c) Apply the precautionary approach; (d) Apply the ecosystem approach; (e) Minimize pollution, waste, discards and catch by lost or abandoned gear; (f) Protect biodiversity in the marine environment; (g) Prevent or eliminate overfishing and excess fishing capacity and ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources; (h) Take into account the interests of artisanal and subsistence fishers;

Provision of UNCLOS	Obligations of the flag State
	(i) Allow collection and sharing, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as set out in annex I, as well as information from national and international research programmes; (j) Promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management; and (k) Implement and enforce conservation and management measures through effective monitoring, control and surveillance.
Article 6	**Application of the precautionary approach** Obligation of all States, including flag States, to apply the precautionary approach widely to the conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment.
Article 7(2)	**Compatibility of conservation and management measures** Obligation of the flag State and the coastal State to ensure compatibility of conservation and management measures established for the high seas with those adopted for areas under national jurisdiction in order to ensure the conservation and management of straddling fish stocks and highly migratory fish stocks.
Article 7(3)	Obligation of the flag State and the coastal State to make every effort to agree on conservation and management measures within a reasonable time.
Article 7(5)	Obligation of the flag State and the coastal State concerned to make every effort to enter into provisional arrangements of a practical nature, pending agreement on compatible conservation and management measures.
Article 7(8)	Obligation of the flag State to regularly inform other interested States, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures it has adopted for regulating the activities of vessels flying its flag which fish for such stocks on the high seas.

Part III
Mechanisms for international cooperation concerning straddling fish stocks and highly migratory fish stocks

Provision of UNCLOS	*Obligations of the flag State*
Article 8(2)	Obligation to enter into consultations in good faith without delay where fish stocks are threatened or where a new fishery is being developed in order to ensure proper conservation and management.
Article 8(3)	Obligation of the flag State fishing on the high seas for straddling fish stocks or highly migratory fish stocks and the relevant coastal State to give effect to their duty to cooperate by becoming members of the subregional or regional fisheries management organization or participants in the subregional or regional fisheries arrangement that has the competence to establish conservation and management measures for particular straddling fish stocks or highly migratory fish stocks, or by agreeing to apply the conservation and management measures established by such organization or arrangement.
Article 8(5)	Obligation of the flag State fishing on the high seas for a particular straddling fish stock or highly migratory fish stock, States in a subregion or region, and the relevant coastal State to cooperate to establish a subregional or regional fisheries management organization or to enter into other appropriate arrangements to ensure the conservation and management of such stock and participate in the work of the organization or arrangement, where there is no such organization or arrangement to establish conservation and management measures for that particular straddling fish stock or highly migratory fish stock.
Article 13	**Strengthening of existing organizations and arrangements** Obligation of States, including flag States, to cooperate to strengthen existing subregional and regional fisheries management organizations and arrangements in order to improve their effectiveness in establishing and implementing conservation and management measures for straddling fish stocks and highly migratory fish stocks.
Article 14	**Collection and provision of information and cooperation in scientific research** 1. Obligation of the flag State to ensure that fishing vessels flying its flag provide such information as may be necessary in order to fulfil its obligations under the Agreement. To this end, the flag State shall, in accordance with annex I: (a) Collect and exchange scientific, technical and statistical data with respect to fisheries for straddling fish stocks and highly migratory fish stocks; (b) Ensure that data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfil the requirements of subregional or regional fisheries management organizations or arrangements; and (c) Take appropriate measures to verify the accuracy of such data. 2. States, including flag States, shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements.

(a) To agree on the specification of data and the format in which they are to be provided to such organizations or arrangements, taking into account the nature of the stocks and the fisheries for those stocks; and

(b) To develop and share analytical techniques and stock assessment methodologies to improve measures for the conservation and management of straddling fish stocks and highly migratory fish stocks.

3. Consistent with Part XIII of the Convention, States, including flag States, shall cooperate, either directly or through competent international organizations, to strengthen scientific research capacity in the field of fisheries and promote scientific research related to the conservation and management of straddling fish stocks and highly migratory fish stocks for the benefit of all. To this end, a flag State or the competent international organization conducting such research beyond areas under national jurisdiction shall actively promote the publication and dissemination to any interested States of the results of that research and information relating to its objectives and methods and, to the extent practicable, shall facilitate the participation of scientists from those States in such research.

Article 16

Areas of the high seas surrounded entirely by an area under the national jurisdiction of a single State

1. Obligation of the flag State fishing for straddling fish stocks and highly migratory fish stocks in an area of the high seas surrounded entirely by an area under the national jurisdiction of a single State and the latter State to cooperate to establish conservation and management measures in respect of those stocks in the high seas area. Having regard to the natural characteristics of the area, the flag State and the coastal State shall pay special attention to the establishment of compatible conservation and management measures for such stocks pursuant to article 7. Measures taken in respect of the high seas shall take into account the rights, duties and interests of the coastal State under the Convention, shall be based on the best scientific evidence available and shall also take into account any conservation and management measures adopted and applied in respect of the same stocks in accordance with article 61 of the Convention by the coastal State in the area under national jurisdiction. The flag State and the coastal State shall also agree on measures for monitoring, control, surveillance and enforcement to ensure compliance with the conservation and management measures in respect of the high seas.

2. Pursuant to article 8, the flag State and the coastal State shall act in good faith and make every effort to agree without delay on conservation and management measures to be applied in the carrying out of fishing operations in the area referred to in paragraph 1. If, within a reasonable period of time, the fishing State concerned and the coastal State are unable to agree on such measures, they shall, having regard to paragraph 1, apply article 7, paragraphs 4, 5 and 6, relating to provisional arrangements or measures. Pending the establishment of such provisional arrangements or measures, the flag State concerned shall take measures in respect of vessels flying its flag in order that they not engage in fisheries which could undermine the stocks concerned.

Part IV
Non-members and non-participants

Provision of UNCLOS *Obligations of the flag State*

Article 17 **Non-members of organizations and non-participants in arrangements**

1. A flag State which is not a member of a subregional or regional fisheries management organization or is not a participant in a subregional or regional fisheries management arrangement, and which does not otherwise agree to apply the conservation and management measures established by such organization or arrangement, is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and management of the relevant straddling fish stocks and highly migratory fish stocks.

2. Such flag State shall not authorize vessels flying its flag to engage in fishing operations for the straddling fish stocks or highly migratory fish stocks which are subject to the conservation and management measures established by such organization or arrangement.

3. States which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement shall, individually or jointly, request the fishing entities referred to in article 1, paragraph 3, which have fishing vessels in the relevant area to cooperate fully with such organization or arrangement in implementing the conservation and management measures it has established, with a view to having such measures applied de facto as extensively as possible to fishing activities in the relevant area. Such fishing entities shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures in respect of the stocks.

4. States which are members of a fisheries management organization or participants in a fisheries arrangement shall exchange information with respect to the activities of fishing vessels flying the flags of States which are neither members of the organization nor participants in the arrangement and which are engaged in fishing operations for the relevant stocks. They shall take measures consistent with this Agreement and international law to deter activities of such vessels which undermine the effectiveness of subregional or regional conservation and management measures.

Part V
Duties of the flag State

Provision of UNCLOS *Obligations of the flag State*

Article 18 **Duties of the flag State**

1. A State whose vessels fish on the high seas shall take such measures as may be necessary to ensure that vessels flying its flag comply with subregional and regional conservation and management measures and that such vessels do not engage in any activity which undermines the effectiveness of such measures.

2. A State shall authorize the use of vessels flying its flag for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels under the Convention and this Agreement.

3. Measures to be taken by a State in respect of vessels flying its flag shall include:

(a) Control of such vessels on the high seas by means of fishing licences, authorizations or permits, in accordance with any applicable procedures agreed at the subregional, regional or global level;

(b) Establishment of regulations:

(i) To apply terms and conditions to the licence, authorization or permit sufficient to fulfil any subregional, regional or global obligations of the flag State;

(ii) To prohibit fishing on the high seas by vessels which are not duly licensed or authorized to fish, or fishing on the high seas by vessels otherwise than in accordance with the terms and conditions of a licence, authorization or permit;

(iii) To require vessels fishing on the high seas to carry the licence, authorization or permit on board at all times and to produce it on demand for inspection by a duly authorized person; and

(iv) To ensure that vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of other States;

(c) Establishment of a national record of fishing vessels authorized to fish on the high seas and provision of access to the information contained in that record on request by directly interested States, taking into account any national laws of the flag State regarding the release of such information;

(d) Requirements for the marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems, such as the Food and Agriculture Organization of the United Nations Standard Specifications for the Marking and Identification of Fishing Vessels;

(e) Requirements for the recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with subregional, regional and global standards for collection of such data;

(f) Requirements for verifying the catch of target and non-target species through such means as observer programmes, inspection schemes, unloading reports, supervision of trans-shipment and monitoring of landed catches and market statistics;

(g) Monitoring, control and surveillance of such vessels, their fishing operations and related activities by, inter alia:

(i) The implementation of national inspection schemes and subregional and regional schemes for cooperation in enforcement pursuant to articles 21 and 22, including requirements for such vessels to permit access by duly authorized inspectors from other States;

(ii) The implementation of national observer programmes and subregional and regional observer programmes in which the flag State is a participant, including requirements for such vessels to permit access by observers from other States to carry out the functions agreed under the programmes; and

(iii) The development and implementation of vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with any national programmes and those which have been subregionally, regionally or globally agreed among the States concerned;

(h) Regulation of trans-shipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined; and

(i) Regulation of fishing activities to ensure compliance with subregional, regional or global measures, including those aimed at minimizing catches of non-target species.

4. Where there is a subregionally, regionally or globally agreed system of monitoring, control and surveillance in effect, States shall ensure that the measures they impose on vessels flying their flag are compatible with that system.

Part VI
Compliance and enforcement

Provision of UNCLOS *Obligations of the flag State*

Article 19 **Compliance and enforcement by the flag State**

1. A State shall ensure compliance by vessels flying its flag with subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks. To this end, that State shall:

(a) Enforce such measures irrespective of where violations occur;

(b) Investigate immediately and fully any alleged violation of subregional or regional conservation and management measures, which may include the physical inspection of the vessels concerned, and report promptly to the State alleging the violation and the relevant subregional or regional organization or arrangement on the progress and outcome of the investigation;

(c) Require any vessel flying its flag to give information to the investigating authority regarding vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation;

Provision of UNCLOS	*Obligations of the flag State*
	(d) If satisfied that sufficient evidence is available in respect of an alleged violation, refer the case to its authorities with a view to instituting proceedings without delay in accordance with its laws and, where appropriate, detain the vessel concerned; and (e) Ensure that, where it has been established, in accordance with its laws, that a vessel has been involved in the commission of a serious violation of such measures, the vessel does not engage in fishing operations on the high seas until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with. 2. All investigations and judicial proceedings shall be carried out expeditiously. Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities. Measures applicable in respect of masters and other officers of fishing vessels shall include provisions which may permit, inter alia, refusal, withdrawal or suspension of authorizations to serve as masters or officers on such vessels.
Article 20(1)	**International cooperation in enforcement** Obligation of States, including flag States, to cooperate, either directly or through subregional or regional fisheries management organizations or arrangements, to ensure compliance with and enforcement of subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks.
Article 20(2)	Obligation of States, including flag States, to cooperate with flag States conducting an investigation of a violation by their vessel upon request.
Article 20(3)	Obligation of the flag State conducting an investigation of an alleged violation of conservation for straddling fish stocks and highly migratory fish stocks, directly or through the relevant subregional or regional fisheries management organization or arrangement, to provide information on the progress and outcome of such investigation to all States having an interest in, or affected by, the alleged violation.
Article 20(4)	Obligation of States, including flag States, to assist each other in identifying vessels reported to have engaged in activities undermining the effectiveness of subregional, regional or global conservation and management measures.
Article 20(5)	Obligation of States, including flag States, to the extent permitted by national laws and regulations, to establish arrangements for making available to prosecuting authorities in other States evidence relating to alleged violations of subregional, regional or global conservation and management measures.
Article 20(6)	Where there are reasonable grounds for believing that a vessel on the high seas has been engaged in unauthorized fishing within an area under the jurisdiction of a coastal State, the flag State of that vessel, at the request of the coastal State concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the coastal State in taking appropriate enforcement action in such cases and may authorize the relevant authorities of the coastal State to board and inspect the vessel on the high seas. This paragraph is without prejudice to article 111 of the Convention.

Provision of UNCLOS	*Obligations of the flag State*
Article 21(2)	**Subregional and regional cooperation in enforcement** Obligation of States, including flag States, to establish, through subregional or regional fisheries management organizations or arrangements, procedures for boarding and inspection pursuant to paragraph 1, as well as procedures to implement other provisions of this article.[77] Such procedures shall be consistent with this article and the basic procedures set out in article 22 and shall not discriminate against non-members of the organization or non-participants in the arrangement. Boarding and inspection as well as any subsequent enforcement action shall be conducted in accordance with such procedures. States shall give due publicity to procedures established pursuant to this paragraph.
Article 21(4)	Obligation of inspecting States to clearly mark inspecting vessels as being on government service and to inform other States of the form of identification issued to inspectors. Obligation of a flag State, at the time of becoming a party to this Agreement, to designate an appropriate authority to receive notifications from inspecting States and to give due publicity of such designation through the relevant subregional or regional fisheries management organization or arrangement.
Article 21(5)	Obligation of inspecting States to secure evidence of a violation and to promptly notify the flag State.
Article 21(6)	Obligation of the flag State to respond, within three working days of its receipt, or such other period as may be prescribed in procedures established in accordance with paragraph 2, to notification by the inspecting State indicating that there are clear grounds for believing that a vessel flying its flag has engaged in an activity contrary to the conservation and management measures of straddling fish stocks and highly migratory fish stocks, and to either: (a) Fulfil, without delay, its obligations under article 19 to investigate and, if evidence so warrants, take enforcement action with respect to the vessel, in which case it shall promptly inform the inspecting State of the results of the investigation and of any enforcement action taken; or (b) Authorize the inspecting State to investigate.
Article 21(7)	Obligation of the flag State, if evidence so warrants, to fulfil its obligations to take enforcement action with respect to the vessel flying its flag.
Article 21(8)	Obligation of the flag State and the inspecting State and, as appropriate, the port State to take all necessary steps to ensure the well-being of the crew regardless of their nationality where, following a boarding and inspection, there are clear grounds for believing that a vessel has committed a serious violation and the flag State has either failed to respond or failed to take action under paragraphs 6 and 7 and the inspectors have required the master to assist in further investigation, by bringing the vessel without delay to nearest appropriate port or to such other port as may be specified in procedures established in accordance with paragraph 2.

Provision of UNCLOS	*Obligations of the flag State*
Article 22(3)	**Basic procedures for boarding and inspection pursuant to article 21** Obligation of the flag State to ensure that vessel masters: (a) Accept and facilitate prompt and safe boarding by the inspectors; (b) Cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures; (c) Do not obstruct, intimidate or interfere with the inspectors in the performance of their duties; (d) Allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection; (e) Provide reasonable facilities, including, where appropriate, food and accommodation, to the inspectors; and (f) Facilitate safe disembarkation by the inspectors.
Article 22(4)	Obligation of the flag State, in the event that the master of a vessel refuses to accept boarding and inspection in accordance with this article and article 21, except in circumstances where, in accordance with generally accepted international regulations, procedures and practices relating to safety at sea, it is necessary to delay the boarding and inspection, to direct the master of the vessel to submit immediately to boarding and inspection and, if the master does not comply with such direction, to suspend the vessel's authorization to fish and order the vessel to return immediately to port. The flag State shall advise the inspecting State of the action it has taken when the circumstances referred to in this paragraph arise.

Table C
Other international instruments

Section 1
Nationality of ships, registration of ships

International instrument	*Relevant provision(s)*
UNCLOS	*Article 91(1), 91(2), 94(2)(a)*
Convention on the High Seas, 1958	*Article 5(1)* Obligation of States to fix the conditions for the grant of their nationality to ships, for the registration of ships in their territory and for the right to fly their flags. Obligation of States to have a genuine link with ships flying their flag and to effectively exercise their jurisdiction and control in administrative, technical and social matters over ships flying their flag.

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Oceans and the law of the sea

Oceans and the law of the sea

Consultative Group on Flag State Implementation

Report of the Secretary-General**

Summary

The present report is the product of the Consultative Group on Flag State Implementation, an inter-agency task force formed by the Secretary-General in response to calls for an investigation into the causes of the failure of some vessels to conform to international requirements regarding ship safety, labour conditions, fisheries conservation and protection of the marine environment. The Group, comprising the International Maritime Organization, the International Labour Organization, the Food and Agriculture Organization of the United Nations, the United Nations Environment Programme, the United Nations Conference on Trade and Development, the Organization for Economic Cooperation and Development and the United Nations, met in May 2003 to discuss the issues and each agreed to contribute chapters of the present report, outlining studies undertaken and measures adopted to address flag State implementation of international obligations. The report includes tables setting out flag State obligations in the United Nations Convention on the Law of the Sea, the United Nations Fish Stocks Agreement and a broad range of other international instruments. Its publication as a General Assembly document responds to a recommendation by the fourth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea and to the request of the General Assembly for a comprehensive elaboration of the duties and obligations of flag States.

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* A/59/50 and Corr.1.

** The present report was submitted after the established deadline in order to reflect the final comments from other organizations which were received at a later date.

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I. Introduction

1. Since the establishment of the United Nations in 1945, a number of organizations, agencies and programmes of the United Nations system have adopted an impressive array of legislation dealing with all aspects of the law of the sea, including navigation, international fishing, ship safety, the prevention of pollution from ships, the welfare of seafarers, etc. All this legislation is based upon the basic principles of freedom of navigation and the responsibility of States for all matters concerning ships having their nationality (that is, flag States have the primary responsibility for ensuring that their ships conform to the relevant requirements as laid down in international instruments).

2. Unfortunately, from high-profile oil tanker accidents, most notably those involving the *Erika* in December 1999 and the *Prestige* in November 2002, from issues raised in relation to vessels involved in illegal, unreported and unregulated (IUU) fishing and from the unsatisfactory working conditions experienced by seafarers on certain vessels, general concerns have been raised that some flag States are not fulfilling their international obligations under the United Nations Convention on the Law of the Sea (UNCLOS) and other international instruments. For example, despite the publicity given to accidents, every year unscrupulous shipowners release more oil illegally into the marine environment from routine operations than all the accidental oil spills combined.[1]

3. Due to the persistence of these problems, the international community in the past few years, has come to realize that improved implementation and enforcement by States of their responsibilities under international law is urgent and essential to maritime safety, protection of marine environment, the welfare of seafarers and sustainable marine resource management.

4. These points were made in a letter dated 22 November 2002 from Greenpeace International, the International Transport Workers' Federation and the World Wide Fund for Nature addressed to the Secretary-General of the United Nations (see annex I to the present report). The authors requested the Secretary-General to play a leadership role by convening a special inter-agency task force to address collectively what they considered to be the root cause of the problem: ship registration, the lack of a "genuine link" between a ship and the State of registration, and the lack of adequate implementation and enforcement by certain flag States. After consultation with the relevant international organizations, the Secretary-General decided to establish a consultative group to exchange information on research conducted and views on measures that had been already undertaken.

5. Consequently, the Division for Ocean Affairs and the Law of the Sea of the United Nations Office of Legal Affairs was requested by the Secretary-General to establish the Consultative Group on Flag State Implementation. Terms of reference were drawn up in consultation with the following agencies, conference and programmes which were invited to become members of the Group: International Maritime Organization (IMO), Food and Agriculture Organization of the United Nations (FAO), International Labour Organization (ILO), United Nations Conference on Trade and Development (UNCTAD), United Nations Environment Programme (UNEP) and Organization for Economic Cooperation and Development (OECD).

6. The object of the Consultative Group was to conduct a thorough investigation into all aspects — political, legal, economic and social — of the issues raised by the lack of flag State control over their vessels, in contravention of international rules and standards. This investigation was to make use of the competencies and expertise offered by agencies and international organizations involved in shipping, trade, environment and the safety of navigation. It was intended to lead to practical conclusions that would not prejudice in any way the mandates of the participating agencies.

7. The Group's areas of focus were:

(a) The ship itself, its owner, its operator, its crew;

(b) The flag State, including criteria for registration, degree of control exercised over vessels;

(c) Port State control;

(d) Coastal States and jurisdiction for the protection of the marine environment;

(e) The role of international organizations.

8. The Consultative Group met at OECD headquarters in Paris on 7 May 2003 (see annex II to the present report). The discussions focused on the areas of competence of each organization in relation to the common issue of flag State implementation. The organizations were to exchange papers on initiatives and measures taken thus far and to be taken in the future, with a preliminary report issued by the Division for Ocean Affairs and the Law of the Sea to the participants, to be followed by a final report to be submitted to the Secretary-General.

9. At its fourth meeting in June 2003, the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea began a serious consideration of the problems of flag State implementation. In order to further the discussion, the meeting requested that the report of the Consultative Group be submitted to its fifth session.

10. In its resolution 58/240 on oceans and the law of the sea, the General Assembly requested the Secretary-General, in cooperation and consultation with relevant agencies, organizations and programmes of the United Nations system, to prepare and disseminate to States a comprehensive elaboration of the duties and obligations of flag States, including the potential consequences for non-compliance prescribed in the relevant international instruments. The present report responds to both those requests, as the submissions by the members of the Group collectively contain a comprehensive elaboration of the duties and obligations of flag States.

II. Reports from Consultative Group participants

A. International Maritime Organization

The International Maritime Organization and the strengthening of flag State jurisdiction in the implementation by ships of safety and anti-pollution measures

Prepared by the IMO Secretariat

11. The recent *Prestige* oil spill in European waters has rekindled political interest in the transport of oil and has led to a number of substantive safety and environmental initiatives by IMO member States for reducing the risks of accidents as well as their environmental impact on the oceans, on local communities, on tourism and on fishing industries. The safety record of the oil transport industry with respect to seaborne trade has improved significantly in the past decade as a result of the instruments and treaties which have been adopted by IMO and the recognition by the major players in the industry of their responsibilities. However, the impact of a single major oil spill can have devastating effects. The membership of IMO has therefore taken a very strong position with regard to further reducing the risks and promoting clear accountability of flag States. Its work programme for achieving these objectives is ambitious.

12. At the inter-agency meeting it was agreed that each participating organization would provide the Division for Ocean Affairs and the Law of the Sea with a paper summarizing the work performed by each organization in connection with the implementation by flag States of duties in accordance with article 94 of UNCLOS. The role of IMO in this regard should be seen as pre-eminent: IMO has an exclusive mandate to adopt safety and anti-pollution regulations applicable on board ships. Most IMO technical rules are self-executing; as such they have been written to implement directly the framework principles of safety and prevention of marine pollution contained in UNCLOS.

13. The present paper summarizes the main features of the mandate of IMO in accordance with UNCLOS and, as agreed at the Paris meeting, a summary of the main activities undertaken to enhance the efficiency of flag State implementation. It also includes reference to cooperation between IMO and other organizations within the United Nations system.

1. Implementation through IMO rules of the flag State's duties as prescribed by UNCLOS

14. Since 1959, IMO, the sole United Nations specialized agency exclusively devoted to maritime affairs, has been elaborating comprehensive multilateral treaties imposing primarily upon the flag State a wide range of technical measures designed to improve the safety of shipping and enhance the prevention of marine pollution from vessels. It should also be noted that measures of port State control are also regulated in IMO treaties aimed at preventing and correcting deficiencies in the exercise of flag State jurisdiction.

15. The most important IMO treaties are implemented worldwide by States representing together between 95 and 99 per cent of the world's merchant fleet tonnage.

16. Beginning in 1973, the Secretariat of IMO (then IMCO) actively contributed to the work of the Third United Nations Conference on the Law of the Sea in order to ensure that the elaboration of IMO instruments conformed with the basic principles guiding the elaboration of the future Convention. Although IMO is explicitly mentioned in only one of the articles of UNCLOS (article 2 of annex VIII), several provisions in the Convention refer to the adoption by the "competent international organization" of international shipping rules and standards in matters concerning maritime safety, efficiency of navigation and the prevention and control of marine pollution from vessels and by dumping.

17. The articles and provisions of the Convention which are of particular relevance in this context include the following:

- Article 21(2), which refers to the "generally accepted international rules or standards" on the "design, construction, manning or equipment" of ships in the context of laws relating to innocent passage through the territorial sea; article 211(6)(c), which refers to the "generally accepted international rules and standards" in the context of pollution from vessels; articles 217(1) and (2), which refer to the "applicable international rules and standards" in the context of flag State enforcement; and article 94(3), (4) and (5), which requires flag States to conform to the "generally accepted international regulations, procedures and practices" governing, inter alia, the construction, equipment and seaworthiness of ships, as well as the manning of ships and the training of crews, taking into account "applicable international instruments";
- Articles 21(4), 39(2), and by extension article 54, which refer to "generally accepted international regulations" in the context of the prevention of collisions at sea;
- Articles 22(3)(a), 41(4) and 53(9), which refer to the "recommendations [or proposals] of the competent international organization" (IMO) in the context of the designation of sea lanes, the prescription of traffic separation schemes and their substitution;
- Article 23, which refers to the requirements in respect of documentation and special precautionary measures established by international agreements for foreign nuclear-powered ships and ships carrying nuclear or inherently dangerous or noxious substances;
- Article 60, and by extension article 80, refers to the "generally accepted international standards established ... by the competent international organization" (IMO) for the removal of abandoned or disused installations or structures to ensure safety of navigation (para. 3); the "applicable international standards" for the determination of the breadth of the safety zones; the "generally accepted standards or recommendations" of the "competent international organization" (IMO) where the breadth exceeds a distance of 500 metres (para. 5); and the "generally accepted international standards" regarding navigation in the vicinity of artificial islands, installations, structures and safety zones (para. 6);

- Article 94(3), (4), and (5), which regulates the duties of flag States, article 39(2), which concerns the duties of ships in transit passage, and by extension article 54, refer to the "generally accepted international regulations, procedures and practices" for safety at sea and for the prevention, reduction and control of pollution from ships;
- Articles 210(4) and (6) refer to the "global rules, standards, and recommended practices and procedures" for the prevention, reduction and control of pollution by dumping; and article 216(1) refers to the enforcement of such "applicable international rules and standards established through competent international organizations or diplomatic conference";
- Article 211 refers to the "international rules and standards" established by "States acting through the competent international organization" (para. 1) and "generally accepted international rules and standards established through the competent international organization" (paras. 2 and 5) for the prevention, reduction and control of pollution of the marine environment from vessels; while articles 217(1) and (2), article 218(1) and (3), and article 220(1), (2) and (3), dealing with enforcement of anti-pollution rules, refer to the "applicable international rules and standards". Articles 217(3) and 226(1) refer to the certificates (records and other documents) required by international rules and standards in the context of pollution control;
- Article 211(6)(a), regarding pollution from vessels, refers to such "international rules and standards or navigational practices as are made applicable, through the [competent international] organization [IMO], for special areas";
- Article 211(7) requires such "international rules and standards" to include, inter alia, those relating to prompt notification to coastal States, whose coastline or related interests may be affected by incidents, including maritime casualties, which involve discharges, or probability of discharges;
- Articles 219 and 226(1)(c) refer to "applicable international rules and standards" relating to seaworthiness of vessels, while article 94(5) refers to "generally accepted international regulations, procedures and practices" governing seaworthiness of ships.

18. The basic obligations imposed upon the flag State are contained in article 94 of UNCLOS, which requires flag States to take measures to ensure safety at sea which conform to "generally accepted international regulations, procedures and practices" (article 94(3), (4) and (5)). Several IMO safety instruments include provisions which also aim at preventing and controlling pollution hazards posed by maritime accidents involving ships. In these provisions the management of safety and pollution risks are interconnected. Other IMO instruments exclusively regulate anti-pollution measures, irrespective of whether the introduction of polluting substances into the sea is the result of an accident involving a ship or from the operational discharges from vessels. Those instruments have proved to be an effective vehicle for the implementation of article 217 of UNCLOS, which provides for the basic obligations imposed upon the flag State to ensure compliance by its vessels with applicable international rules and standards established through the competent international organization or general diplomatic conference.

19. The most significant and widely accepted IMO safety and anti-pollution treaties providing for measures to ensure the effective implementation of UNCLOS safety and anti-pollution shipping obligations are the following:

- International Convention for the Safety of Life at Sea, 1974 (SOLAS 74) and Protocols of 1978 and 1988 relating thereto;
- International Convention on Load Lines, 1966 (LOAD LINES 1966) and Protocol of 1988 relating thereto;
- International Convention on Tonnage Measurement of Ships, 1969 (TONNAGE 1969);
- Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG 1972);
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 1978);
- International Convention on Maritime Search and Rescue (SAR 1979);
- International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 related thereto (MARPOL 73/78);
- International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 (AFS) (not yet in force).

20. These treaty law instruments have been complemented with important resolutions adopted by the IMO Assembly. Resolution A.847(20) on guidelines to assist flag States in the implementation of IMO instruments provides flag States with a means to establish and maintain measures for the effective application and enforcement of the following IMO Conventions: SOLAS 1974, MARPOL 73/78, LOAD LINES 1966, and STCW 1978. A subsequent IMO Assembly resolution A.912(22), which supersedes and revokes resolution A.881(21), provides guidance to assist flag States in the self-assessment of their performance; and Assembly resolution A.914(22) provides guidance on measures to further strengthen flag State implementation. Enforcement of IMO safety and anti-pollution provisions has been strengthened by the incorporation into SOLAS of the International Safety Management (ISM) Code, under which companies operating ships are subject to a safety management system under the control of the administration of the flag State.

Work of IMO on strengthening flag State jurisdiction in the implementation of IMO Conventions

21. As a result of the worldwide implementation of IMO regulations, the casualty rate for all types of merchant ships has plummeted over successive decades. In terms of average annual loss rates per million flight, or voyage, hours at risk, the loss rate for commercial aircraft is three times that for merchant ships, and since 1988, the merchant ship loss rate per 1,000 units at risk has been consistently lower than the rate for commercial aircraft.

22. The response of IMO to serious accidents has been swift and decisive, and its current proactive policy has created a regulatory infrastructure that covers everything from measures designed to prevent casualties and accidents and minimize damage to the environment, through measures aimed at ensuring an effective response when accidents do happen, to those activities which have created

the compensation regime which ensures that the innocent victims of pollution and other mishaps receive adequate recompense.

23. IMO's Subcommittee on Flag State Implementation (FSI) was set up in 1992 following the recognition by the Maritime Safety Committee (MSC) and the Marine Environment Protection Committee (MEPC) of the urgent need to improve maritime safety and the prevention of marine pollution through stricter and more uniform application of existing regulations, in the wake of accidents such as *Herald of Free Enterprise*, *Scandinavian Star*, *Doña Paz* and *Exxon Valdez*. Incidents such as the *Erika* and the *Prestige* have reinforced the importance of the Subcommittee's activities. Its primary objective is the identification of measures necessary to ensure effective and consistent global implementation of IMO regulations, including the consideration of special difficulties faced by developing countries. There was agreement that the effectiveness of IMO safety and pollution prevention instruments depends primarily on the application and enforcement of their requirements by the States parties and that many have experienced difficulties in complying fully with the provisions of the instruments.

24. To meet its primary objective, the Subcommittee was assigned the following terms of reference:

- To identify the range of flag State obligations emanating from the IMO treaty instruments;
- To assess the current level of implementation of instruments by flag States;
- To identify those areas where flag States have difficulty in fully implementing IMO instruments;
- To assess problems in the involvement of the States party to the IMO instruments in their capacity as port States, coastal States and countries training and certifying officers and crews;
- To make proposals to assist parties in implementing and complying with IMO treaty instruments, such proposals to be implemented by States or by the organization; and to monitor the performance of actions taken.

25. Since its creation, the Subcommittee has progressively discharged its mandate and produced important guidelines and recommendations. Some have been adopted as resolutions by the IMO Assembly, MSC and MEPC, others have taken the form of circulars. The Assembly resolutions adopted as a result of the work of the FSI Subcommittee include:

- A.739(18) on Guidelines for the authorization of organizations acting on behalf of the Administration
- A.740(18) on Interim guidelines to assist flag States
- A.741(18) on an International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code)
- A.742(18) on Procedures for the control of operational requirements related to the safety of ships and pollution prevention
- A.787(19) on Procedures for port State control

- A.788(19) on Guidelines on Implementation of the International Safety Management (ISM) Code by Administrations
- A.789(19) on Specifications on the survey and certification functions of recognized organizations acting on behalf of the Administration
- A.847(20) on Guidelines to assist flag States in the implementation of IMO instruments
- A.848(20) on Implementation of the International Safety Management (ISM) Code
- A.849(20) on a Code for the investigation of marine casualties and incidents
- A.881(21) on Self-assessment of flag State performance
- A.882(21) on Amendments to the Procedures for Port State Control (resolution A.787(19))
- A.884(21) on Amendments to the Code for the investigation of marine casualties and incidents (resolution A.849(20))
- 912(22) on Self-assessment of flag State performance
- 914(22) on Measures to further strengthen flag State implementation

26. As a result of the work of the FSI Subcommittee, MSC adopted the following resolutions:

- MSC.83(70) on Amendments to the Survey Guidelines under the harmonized system of survey and certification (resolution A.746(18)), concerning testing and servicing of 406 MHz EPIRBs and survey of emergency towing arrangements
- MSC.84(70) on Amendments to the Guidelines on surveys required by the 1978 SOLAS Protocol, the International Bulk Chemical Code and the International Gas Carrier Code (resolution A.560(14)), concerning the survey of emergency towing arrangements

27. MSC and MEPC circulars produced as a result of the FSI Subcommittee's work include the following:

- MSC/Circ.620 on Amendments to resolution A.466(XII) on Procedures for the control of ships
- MSC/Circ.630 on Procedures for the control of ships — Information on available inspection services
- MSC/Circ.710-MEPC/Circ.307 on Model agreement for the authorization of organizations acting on behalf of the Administration
- MSC/Circ.753 on Report on fishing vessels and fishermen statistics
- MSC/Circ.772-MEPC/Circ.319 on Guidelines for the development and approval of reporting requirements in non-mandatory instruments and reports
- MSC/Circ.788 on Authorization of recognized organizations acting on behalf of Administrations

- MEPC/Circ.325-MSC/Circ.802 on Provision of preliminary information on serious and very serious casualties by MEPC/Circ.332 rescue coordination centres
- MSC/Circ.953-MEPC/Circ.372 on Reports on marine casualties and incidents — Revised harmonized reporting procedures — Reports required under SOLAS regulation I/21 and MARPOL 73/78 articles 8 and 12
- MSC/Circ.889-MEPC/Circ. on Self-assessment of flag State performance
- MSC/Circ.890-MEPC/Circ.354 on Interim guidelines for port State control related to the ISM Code
- MSC/Circ.1052-MEPC.6/Circ.8 on National contact points for safety and pollution prevention
- MSC/Circ.954-MEPC/Circ.373 on Self-assessment of flag State performance: criteria and performance indicators
- MSC/Circ.955 on Servicing of life-saving appliances and radiocommunication equipment under the harmonized system of survey and certification (HSSC)
- MSC/Circ.956 on Guidelines for unscheduled inspections of ro-ro passenger ships by flag States
- MSC/Circ.1010-MEPC/Circ.382 on Communication of information on the authorization of recognized organizations (ROs)
- MSC/Circ.1011-MEPC/Circ.383 on Measures to improve port State control procedures with a view to establishing a mechanism for a constructive and timely dialogue between flag States and port States on port State control interventions through improved channels of communication between port States and flag States
- MSC/Circ.1058-MEPC/Circ.400 on Interim Guidelines to assist flag States and other substantially interested States to establish and maintain an effective framework for consultation and cooperation in marine casualty investigations

28. The FSI Subcommittee has produced the following circulars:

- FSI/Circ.1 on Baseline assessment questionnaire
- FSI/Circ.2 on Questionnaire on current practices for the training and qualifications of port State control officers
- FSI/Circ.10 on List of non-governmental organizations authorized to carry out surveys and issue certificates on behalf of Administrations
- FSI.2 circular series on Port State control detentions and flag State comments
- FSI.3 and FSI.4 circular series on casualties to merchant ships and fishing vessels

2. Major initiative to create the IMO model audit scheme

29. At its eighty-eighth session, the IMO Council considered a proposal for the development of an IMO model audit scheme to be implemented on a voluntary basis and approved, in principle, the concept for such a scheme. It further requested the Secretary-General to study the International Civil Aviation Organization (ICAO)

Model Audit Scheme and advise the Council, the Maritime Safety Committee, the Marine Environment Protection Committee and the Technical Cooperation Committee (TCC) on any aspects of that scheme which might be taken into account in developing the IMO scheme. The objective of the scheme would be to enhance the performance of member States in implementing appropriate IMO Conventions relating to maritime safety and the prevention of marine pollution.

30. The ICAO universal safety oversight audit programme was chosen as an example because it provides a structured and well-defined process for the audit of sovereign States which have collectively established the mandate and objectives of the programme. The ICAO audit programme contains a number of detailed procedures and requirements which will be considered in the development of an IMO model audit scheme.

31. In November 2002, the IMO Council considered the requested reports of the Secretary-General describing the study of the ICAO universal safety oversight audit programme and containing suggestions and recommendations based thereon. During its deliberations on the issue, the Council also considered the outcome of the discussions at the forty-eighth session of the Marine Environment Protection Committee (MEPC 48), which had endorsed the establishment of a joint MSC/MEPC/TCC working group on the voluntary IMO model audit scheme to be held during MSC 77 and had identified relevant documents containing environmentally critical areas to be taken into account by the working group. The joint working group on the model audit scheme was convened during MSC 77 with the terms of reference as approved by the Council.

32. The Committee endorsed the working group's view that the enactment of appropriate legislation, its implementation and enforcement were the three key issues on the basis of which a member State's performance could be measured with respect to its treaty obligations and the overall aim and 10 supporting objectives of the audit scheme. These objectives included compliance with the Code for the implementation of [mandatory] IMO instruments; enactment, administration and enforcement of laws and regulations; delegation of authority; control and monitoring of the execution of statutory responsibilities; the discharge of other obligations and responsibilities by a member State; capacity-building and technical assistance; and the provision of appropriate feedback to the audited member State, the organization's membership at large and into the work of the organization.

33. Subsequently, the IMO Council approved the principles of the Voluntary IMO Member State Audit Scheme and decided that the Scheme should be developed in such a manner as not to exclude the possibility in the future of it being made mandatory. The decision was endorsed by the IMO Assembly in its resolution A.946(23).

3. Claims by seafarers

34. As a result of the work of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers, two important resolutions/guidelines were adopted by the IMO Assembly in November 2001.

35. Resolution A.930(22) on Guidelines on Provision of Financial Security in Cases of Abandonment of Seafarers states that abandonment of seafarers is a serious

problem involving a human and social dimension and recognizes that, given the global nature of the shipping industry, seafarers need special protection. In that context, the resolution notes that the adoption of guidelines is an appropriate interim measure to ensure provision of financial security in case of abandonment of seafarers. The resolution recommends measures to be implemented by shipowners to ensure the provision of an adequate financial security system for seafarers in case of abandonment and includes associated guidelines which set out the main features and scope of coverage of the financial security system and also contain recommendations for the certification of such systems.

36. Resolution A.931(22) on Guidelines on Shipowners' Responsibilities in respect of Contractual Claims for Personal Injury to or Death of Seafarers notes a need to recommend minimum international standards for the responsibilities of shipowners in respect of contractual claims in such cases. It expresses the concern that, if shipowners do not have effective insurance coverage or other form of financial security, seafarers are unlikely to obtain full and prompt compensation. It states that putting in place effective arrangements for the payment of compensation is part of the shipowners' responsibilities to provide safe and decent working conditions. The resolution includes associated guidelines recommending measures to be implemented, including certification and a model receipt and release form for claims.

37. The implementation of these resolutions is currently subject to assessment by the Joint Group, which meets every year and produces recommendations to both ILO and IMO governing bodies.

4. Conclusions

38. In becoming party to IMO treaties flag States assume the primary responsibility for the effective enforcement of international safety and environmental shipping standards. It is also through the operation of IMO treaties that port State control measures can be enforced worldwide as a corrective remedy for non-compliance with those standards. It is currently beyond the scope of the mandate of IMO to participate in that enforcement activity. The organization lacks both the resources and, more important, the mandate to do so.

39. In view of this reality, further involvement of IMO in the achievement of substantive improvements in the strengthening of flag State jurisdiction necessarily depends upon the possibility of its being given the authority to verify that flag States really do implement conventions and other instruments fully and properly. The so-called "White List" of parties to the revised STCW Convention that are deemed to be giving full effect to its provisions is a case in point. Other Conventions should have a similar "performance clause". There should be a provision for sanctions and penalties which may be applied if convention requirements are not adhered to. Hence the importance of an audit scheme whereby flag State performance can be properly monitored by IMO. A requirement should be introduced that all accident investigation reports must be submitted to IMO with all possible speed, and not just at the discretion of the flag State concerned.

B. Food and Agriculture Organization of the United Nations

Work undertaken in the Food and Agriculture Organization of the United Nations related to flag State implementation

Prepared by the FAO Secretariat

40. The work undertaken in FAO in the area of flag State implementation focuses on fishing vessels and their operation. The main thrust of this work concerns the promotion of responsible fishing practices both in waters under national jurisdiction and on the high seas. Some work has also been done in related areas, including standards for the construction and survey of fishing vessels and for the safety at sea for fishers.

I. National instruments related to fisheries developed under the auspices of FAO[2]

1. 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (1993 FAO Compliance Agreement)

41. The FAO Committee on Fisheries (COFI), at its nineteenth session, in March 1991, recommended the development of new approaches to fisheries management which would embrace conservation, environmental, social and economic considerations. Following the 1992 United Nations Conference on Environment and Development and the 1992 Cancún International Conference on Responsible Fishing, FAO embarked on the process which resulted, inter alia, in the Code of Conduct for Responsible Fisheries. In this process, at the twentieth session of COFI, held in March 1993, FAO was requested to prepare on a "fast track" basis, as part of the Code, proposals to prevent reflagging of fishing vessels which affected conservation and management measures on the high seas. This resulted in the adoption by the FAO Conference, at its twenty-seventh session in November 1993, of the FAO Compliance Agreement, which is an integral part of the Code of Conduct.[3]

42. The primary objective of the FAO Compliance Agreement is to deal with the problem of the reflagging of fishing vessels as a means of avoiding compliance with agreed conservation and management measures. Broadly speaking, it applies to fishing vessels that are used for fishing on the high seas[4] and entered into force on 24 April 2003.

43. The FAO Compliance Agreement sets out in more detail than does the 1982 United Nations Convention the responsibilities of the flag State.[5] While the 1982 United Nations Convention simply provides that States have a duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas, the FAO Compliance Agreement requires States to take measures to ensure that fishing vessels entitled to fly their flag do not engage in any activity that undermines the effectiveness of international conservation and management measures.[6]

44. The Compliance Agreement, for the first time, makes a connection between the right to fly a State's flag and the right to fish on the high seas. This is an important advance in flag State control as it provides a means for a State to control vessels flying its flag. Each party is required:

- To take measures to ensure that its fishing vessels do not engage in any activity that undermines the effectiveness of international conservation and management measures;[7]
- Not to allow its vessels to be used for fishing on the high seas unless authorized to do so by the appropriate authorities of the flag State;[8]
- To be satisfied that it can effectively exercise its responsibilities under the Compliance Agreement before it authorizes any fishing vessel to fish on the high seas.[9]

45. Parties are required to maintain a record of their fishing vessels authorized to be used for fishing on the high seas.[10]

46. Authorizations to fish may be subject to conditions[11] and will be deemed cancelled if a vessel is no longer entitled to fly the flag of the authorizing State.[12]

47. The freedom of vessels with a poor compliance record to reflag is limited: Parties are not to authorize any fishing vessel to be used for fishing on the high seas if it has been previously registered in the territory of:

- Another party and undermined the effectiveness of international conservation and management measures; or
- A non-party if there is sufficient information as to why the authorization to fish was suspended or withdrawn.

48. However, this would not apply if the ownership of the vessel changed and the new owner has provided sufficient evidence that the previous owner has no further legal, beneficial or financial interest in, or control of, the fishing vessel. Parties are to authorize these "non-compliant" vessels to fish only if they are satisfied that the vessels will not undermine the object and purpose of the Compliance Agreement.[13]

49. These provisions are bolstered by requirements on monitoring, control and surveillance. Parties must ensure that their flag vessels comply with vessel marking standards[14] and provide information that allows the party to fulfil its obligations under the Compliance Agreement.[15] Parties are required to take enforcement measures against vessels that contravene the Agreement, including establishing offences under national legislation and imposing sanctions to enforce compliance.[16] Sanctions should deprive offenders of the benefits accruing from their illegal activities and may result in the refusal, suspension or withdrawal of the authorization to fish on the high seas.[17]

50. Flag State control measures are overlaid by the requirement that parties work together to take proactive measures to exchange information, monitor and allow for the taking of investigatory measures with respect to vessels flying the flag of other Parties.[18] FAO plays a significant role in the collection and exchange of information, including the establishment of a database of vessels authorized to fish on the high seas which will facilitate vessel monitoring and assist in tracking the reflagging of vessels.[19]

51. The FAO Compliance Agreement also encourages the strengthening of international cooperation on a global, regional, subregional or bilateral basis and increased transparency through the exchange of information on high seas fishing.[20]

52. Notably, the criterion of a "genuine link" referred to in article 91 of the 1982 United Nations Convention, in the high seas fishing context, is not given any content. The "link" mentioned in article III.3 of the FAO Compliance Agreement refers to the ability of a State to exercise effective control in respect of its vessels. The Agreement leaves it up to the parties to determine what kind of link vessels ought to have to the flag State and then to set this out in legislation.

Papers, studies and reports on the 1993 FAO Compliance Agreement

- "Flag State responsibility and the contribution of recently concluded international instruments in preventing, deterring and eliminating illegal, unreported and unregulated (IUU) fishing", by Annick Van Houtte (Legal Office, FAO), FAO Informal Consultation on Flag States Operating Open Registries for Fishing Vessels and their Impact on Illegal, Unreported and Unregulated Fishing, 23-25 September 2003, Miami, Florida, United States of America
- "Legislating for Sustainable Fisheries — A Guide to Implementing the 1993 FAO Compliance Agreement and 1995 UN Fish Stocks Agreement", by William Edeson (Senior Legal Officer, FAO), David Freestone (Chief Counsel, The World Bank) and Elly Gudmunsdottir (Counsel, The World Bank). The World Bank, 2001
- "The FAO Compliance Agreement", by Gerald Moore (Former Legal Counsel, FAO), published in *Current Fisheries Issues and the Food and Agriculture Organization of the United Nations*, edited by Myron H. Nordquist and John Norton Moore, Center for Oceans Law and Policy, 2000
- "Making the New Rules Work: Implementation of the Global Fisheries Instruments", by David Balton (Director, Office of Marine Conservation, United States Department of State), published in *Current Fisheries Issues* ... (see above)
- "Implementing the 1982 UN Convention, the FAO Compliance Agreement and the UN Fish Stocks Agreement", by William Edeson (Legal Office, FAO), published in *Current Fisheries Issues* ... (see above)
- "Implementing the Law of the Sea Convention, the FAO Compliance Agreement and the UN Fish Stocks Agreement: A View from the World Bank", by David Freestone (Chief Counsel, The World Bank) published in *Current Fisheries Issues* ... (see above)
- COFI — Report of the twentieth session of the Committee on Fisheries, Rome, 15-19 March 1993. FAO Fisheries Report No. 488
- "Technical Consultation on High Seas Fishing", Rome, 7-15 September 1992. FAO Fisheries Report No. 484 (Suppl.)
- "Report of the 102nd session of the FAO Council", Rome, 9-20 November 1992. Report No. FAO-GIC--CL/102/REP

2. The 1995 Code of Conduct for Responsible Fisheries

53. The Code of Conduct was unanimously adopted by the FAO Conference on 31 October 1995.[21] It provides a framework for national and international efforts to promote the responsible exploitation of aquatic living resources in harmony with the environment.[22]

54. The Code is global in scope; it covers all fishing activities both within and beyond zones of national jurisdiction and, as such, is broader than the FAO Compliance Agreement and the United Nations Fish Stocks Agreement. It embraces a wide range of subjects leading to better conservation and management of fisheries, including the gross overcapacity of the global fishing fleet, the inadequate control of vessels by flag States, the inadequate provision of fishery data to both flag States and coastal States, and trade restrictions intended to achieve environmental protection.

55. Although voluntary, the Code of Conduct applies to all States and entities and to all fishers. Since its adoption in 1995, it has influenced countries to modify their fisheries laws to facilitate the Code's implementation.[23]

56. The objectives of the Code are to establish principles and criteria for national and international legal and institutional arrangements and to provide standards of conduct for persons involved in the fishery sector. FAO has prepared and will prepare, as the need arises, technical guidelines to support the implementation of the Code.

57. Flag States have similar roles under the Code as they do under other international instruments. Despite the heavy focus originally accorded to the reflagging problem in the call for the development of the Code, it does not deal solely and directly with this issue. The Code does however deal with the issue of flag State duties and, in its "General Principles", it urges States to exercise effective flag State control in order to ensure the proper application of the Code. Flag States should ensure that fishing vessels entitled to fly their flag do not fish on the high seas or under the jurisdiction of other States unless they have obtained both a Certificate of Registry and an authorization to fish.[24]

58. A framework for vessel monitoring, control and surveillance requirements is provided in the Code: Flag States should maintain records of these fishing vessels, indicating details of the vessels, their ownership and the authorization to fish.[25] Fishing vessels and their fishing gear should be marked in accordance with an internationally recognizable marking system[26] and in accordance with national legislation.

59. The Code encourages States to accept the FAO Compliance Agreement and to adopt laws and regulations to implement it.[27]

60. Flag States may enforce compliance by vessels flying their flag through national legislation and through the imposition of sanctions which may deprive offenders of the benefits accruing from their illegal activities and may result, for serious violations, in the refusal, suspension or withdrawal of the authorization to fish.[28]

61. The Code also urges flag States to ensure protection of their vessels and the crews thereof through compliance with internationally accepted safety standards, or the adoption of appropriate safety requirements where vessels are not covered by

such standards.[29] It encourages access to insurance coverage by owners and charterers of fishing vessels sufficient to protect the crew and their interests, indemnify third parties and protect their own interests.[30] Flag States should ensure that crew members are entitled to repatriation.[31]

62. An indirect reference to the reflagging problem can be found in article 7.8.1, providing that "without prejudice to relevant international agreements, States should encourage banks and financial institutions not to require, as a condition of a loan or mortgage, fishing vessels or fishing support vessels to be flagged in a jurisdiction other than that of the State of beneficial ownership where such a requirement would have the effect of increasing the likelihood of non-compliance with international conservation and management measures".

Papers, studies and reports on the Code of Conduct

- "Closing the gap: the role of 'soft' international instruments to control fishing", by William Edeson (Legal Office, FAO), published in *Australian yearbook of international law*, vol. 20 (1999)
- Rome Declaration on the Implementation of the Code of Conduct for Responsible Fisheries, adopted by the FAO Ministerial Meeting on Fisheries, Rome, 10 and 11 March 1999
- "Food and Agriculture Organization of the UN (FAO)--Code of Conduct for Responsible Fisheries", by William Edeson (Legal Office, FAO) published in *International journal of marine and coastal law* 11:233-238 (1996)
- COFI — Report of the twenty-first session of the Committee on Fisheries, Rome, 10-13 March 1995. FAO Fisheries Report No. 524
- Administrative report of the Technical Consultation on the Code of Conduct for Responsible Fisheries, Rome, 26 September-5 October 1994. FAO Fisheries Report No. 515
- Report of the Expert Consultation on the Code of Conduct for Responsible Fishing — Fishing Operations, Sidney, British Columbia, Canada, 6-11 June 1994. FAO Fisheries Report No. 506
- COFI — Report of the twentieth session of the Committee on Fisheries, Rome 15-19 March 1993. FAO Fisheries Report No. 488
- COFI — Report of the nineteenth session of the Committee on Fisheries, Rome, 8-12 April 1991. FAO Fisheries Report No. 459

3. The International Plans of Action (IPOAs)

63. There have been four IPOAs "elaborated within the framework of the FAO Code of Conduct for Responsible Fisheries as envisaged by article 2 (d)" (IPOA-IUU, art. 4). The two concerning sharks and seabirds are very specific in focus, while the others contain provisions relevant to flag State responsibilities. The International Plan of Action for the Management of Fishing Capacity was adopted by COFI at its twenty-third session in February 1999, and endorsed by the FAO Council in June 1999, while the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) was adopted by the FAO Council in June 2001. As with the Code of Conduct, these instruments are

voluntary in nature in the sense that they are not intended to create legally binding obligations on States.

64. IPOA-Capacity includes in its section III (International considerations) a number of provisions on the duties of flag States, among them a call on States to "recognize the need to deal with the problem of those States which do not fulfil their responsibilities under international law as flag States with respect to their fishing vessels, and in particular those which do not exercise effectively their jurisdiction and control over their vessels which may operate in a manner that contravenes or undermines the relevant rules of international law and international conservation and management measures".[32]

65. Adopted by the COFI at its twenty-fourth session in March 2001,[33] the IPOA-IUU is the most recent international instrument concluded in response to the growing concern about the state of the world's fish stocks. IPOA-IUU refers to the ineffectiveness of existing international instruments addressing IUU fishing due to lack of political will, priority, capacity and resources to ratify or accede to and implement them.[34]

66. IPOA-IUU is a voluntary instrument elaborated within the framework of the FAO Code of Conduct, and technical guidelines have been prepared for its implementation.[35] However, some of its provisions reflect obligations which many States have accepted as binding, either through global instruments or in regional fisheries management organizations (RFMOs). The Code applies to the interpretation and application of IPOA-IUU and its relationship with other international instruments.[36] IPOA-IUU responds to fisheries-specific issues and nothing in it prejudices the positions of States in other forums.

67. IPOA-IUU serves as a checklist for flag States, a comprehensive "toolbox" providing the options for dealing with IUU fishing for a range of situations. In turn, it is anticipated that this checklist should be useful as part of the biennial reporting process by States and RFMOs required by IPOA-IUU.[37] For example, States and RFMOs may report whether and how they have successfully implemented certain items on the checklist, and why they may have decided that other items, or "tools", were not appropriate.

68. The objective of the IPOA is to prevent, deter and eliminate IUU fishing by providing all States with comprehensive, effective and transparent measures by which to act, including through appropriate regional fisheries management organizations established in accordance with international law.[38]

69. Measures to prevent, deter and eliminate IUU fishing are provided in Part IV of IPOA-IUU, including internationally agreed market-related measures, research and the role of the regional fisheries management organizations. Responsibilities are addressed to all States: flag, coastal and port States. It is significant that IPOA-IUU also provides a checklist or "toolbox" for coastal and port States of actions, within their respective jurisdictions, that would allow them to impose an obligation on the flag State. Together with requirements relating to State control over nationals,[39] this checklist opens the way for indirect checks on the flag State by other States and could be useful in the reporting process.[40]

70. Flag State responsibilities comprise a significant portion of the whole IPOA-IUU.[41] IPOA-IUU develops actions in much greater detail than is found in the 1993 FAO Compliance Agreement and the Code of Conduct, and although it in some

respects covers the same ground as the previous instruments, it spells out flag State responsibilities in greater detail and also includes novel actions, inter alia, provisions on "flag-hopping", port State control of fishing vessels and control over nationals.

71. Flag State responsibilities are divided into the following subheadings, described in subsections (a) to (c) below:

- Fishing vessel registration[42]
- Record of fishing vessels[43]
- Authorization to fish[44]

(a) Fishing vessel registration

72. Fishing vessel registration is important because it is the first step in preventing the flagging of vessels with a history of non-compliance. It also enables flag States to monitor their vessels, should they opt to do so. The overall objective of requirements for fishing vessel registration is for States to be able to ensure that fishing vessels flying their flag do not engage in — or support — IUU fishing. To achieve this, a flag State must ensure, before it registers a fishing vessel, that it can exercise its responsibilities with respect to vessels entitled to fly its flag.[45]

73. Consistent with the FAO Compliance Agreement,[46] flag States are to avoid flagging vessels with a history of non-compliance.[47] The IPOA goes further than the FAO Compliance Agreement, however, by encouraging all States involved in a chartering arrangement, including flag States and all other States that accept such an arrangement, to take measures to ensure that chartered vessels do not engage in IUU fishing.[48]

74. Reflagging and "flag-hopping" are serious problems. Flag-hopping is the practice of repeated and rapid changes of a vessel's flag for the purposes of circumventing conservation and management measures or provisions adopted at the national, regional or global level or of facilitating non-compliance with such measures or provisions.[49] Reflagging and flag-hopping allow shipowners to shop around for a flag State which is unable or unwilling to assume responsibility for the vessels it flags, thereby allowing vessels to avoid compliance with conservation and management measures.[50]

75. Under IPOA-IUU, States are encouraged to deter vessels from reflagging and flag-hopping for the purposes of circumventing or non-compliance with conservation and management measures or provisions.[51] Further, actions and standards flag States adopt should be uniform to avoid creating incentives for vessel owners to reflag their vessels to other States.[52]

76. Where the functions of registering a vessel and issuing an authorization to fish are separate, problems may occur in the ability of the State to monitor the activities of its fishing vessels. It may be easier for a vessel to engage in IUU fishing and more difficult for a State to monitor such activities where a vessel can register without providing evidence of a fishing authorization.

77. States are encouraged to consider conducting these functions in a manner which ensures that each gives appropriate consideration to the other. Flag States should ensure appropriate links between the operation of their vessel registers and

the record those States keep of their fishing vessels. Where such functions are not undertaken by one agency, States should ensure sufficient cooperation and information-sharing between the agencies responsible for those functions.[53]

78. Under the IPOA flag a State is also encouraged to consider making its decision to register a fishing vessel conditional upon its being prepared to provide to the vessel an authorization to fish in waters under its jurisdiction, or on the high seas, or conditional upon an authorization to fish being issued by a coastal State to the vessel when it is under the control of that flag State.[54]

(b) Record of fishing vessels

79. Consistent with the FAO Compliance Agreement and the FAO Code of Conduct, the IPOA encourages record keeping and provides a suite of essential information which should be kept. Standard information required includes the name of the vessel, registration number, previous names and port of registry, previous flag, International Radio Call Sign, name and address of owner(s), where and when built, type of vessel, name and address of the operator(s), type of fishing method(s), dimensions of the vessel, renames, addresses and nationalities of the natural or legal persons in whose name the vessel is registered, who is responsible for managing the operations of the vessel, and who is the beneficial owner(s).[55]

80. In addition to this information, and in promoting the objectives of preventing vessels from reflagging, IPOA-IUU also requires the name and ownership history of the vessel, including the history of non-compliance and a picture of the vessel.[56] This information will assist a flag State in monitoring vessels entitled to fly its flag and may make it more difficult for vessels with a history of non-compliance from reflagging.

(c) Authorization to fish

81. As required under the United Nations Fish Stocks Agreement and the FAO Compliance Agreement, and in line with the FAO Code of Conduct, IPOA-IUU requires that States ensure no vessel is allowed to fish without an authorization.[57] Vessels that are entitled to fish outside waters under the sovereignty or jurisdiction of the flag State need an authorization from the flag State, and where a coastal State issues an authorization to fish, it should ensure that no fishing in its waters occurs without an authorization to fish issued to that vessel by the flag State.[58]

82. These provisions provide a "checks and balances system" in which both the coastal State and the flag State are charged with the responsibility of ensuring that vessels fishing under their jurisdiction obtain the appropriate authorizations to fish. The authorization, which should include specified information such as vessel name, area for fishing, species to be fished and gear to be used, may be required to be carried on board.[59]

83. Flag States or coastal States may impose conditions on the authorization to fish, including the requirement for vessel monitoring systems, catch and trans-shipment reporting conditions, observer coverage, maintenance of fishing and related logbooks, navigational equipment, compliance with applicable international conventions and national laws and regulations, and unique marking and identification of vessel and gear.[60] This provision bolsters the flag State's ability to monitor more closely the activities of vessels which fly its flag.

84. Flag States should ensure that their fishing, transport and support vessels do not support or engage in IUU fishing. To this end, flag States should ensure that none of their vessels re-supply fishing vessels engaged in such activities or trans-ship fish to or from these vessels, except where appropriate for humanitarian purposes, including the safety of crew members.[61]

85. Flag States should also ensure that all of their fishing, transport and support vessels involved in trans-shipment at sea have a prior authorization to do so issued by the flag State. Flag States should report to the national fisheries administration or other designated institution and make aggregated information from catch and trans-shipment available to relevant regional and international organizations, including FAO, taking into account confidentiality requirements.[62]

Papers, studies and reports on the International Plans of Action

86. FAO has issued the following documents in connection with the IPOAs:

- "The International Plan of Action on Illegal Unreported Unregulated Fishing: the legal context of a Non-Legally Binding Instrument" by William Edeson (Legal Office, FAO), *International Journal of Marine and Coastal Law* 16 (4), 2001
- "Report of the 2nd Technical Consultation on Illegal, Unreported and Unregulated Fishing", Rome, 22-23 February 2001. FAO Fisheries Report No. 646
- "COFI — Report of the twenty-fourth session of the Committee on Fisheries", Rome, 26 February-2 March 2001. FAO Fisheries Report No. 655
- "Report of the 120th session of the Council of FAO", Rome, 18-23 June 2001. Report No. CL 120/REP
- "Report of the Technical Consultation on Illegal, Unreported and Unregulated Fishing", Rome, 2-6 October 2000. FAO Fisheries Report No. 634
- "Report of and papers presented at the Expert Consultation on Illegal, Unreported and Unregulated Fishing organized by the Government of Australia in cooperation with FAO", Sydney, Australia, 15-19 May 2000. FAO Fisheries Report No. 666
- "Tools to address IUU fishing: the current legal situation", by William Edeson (Legal Office, FAO), prepared as one in a series of specialist background papers for the Expert Consultation on Illegal, Unreported and Unregulated Fishing organized by the Government of Australia in cooperation with FAO, Sydney, Australia, 15-19 May 2000
- "National legislative options to combat IUU fishing", by Blaise Kuemlangan (Legal Office, FAO), prepared as one in a series of specialist background papers for the Expert Consultation on Illegal, Unreported and Unregulated Fishing organized by the Government of Australia in cooperation with FAO, Sydney, Australia, 15-19 May 2000
- "Illegal, unreported and unregulated fishing: considerations for developing countries", by Transform Aqorau (Legal Counsel, South Pacific Forum Fisheries Agency), prepared as one in a series of specialist background papers for the Expert Consultation on Illegal, Unreported and Unregulated Fishing

organized by the Government of Australia in cooperation with FAO, Sydney, Australia, 15-19 May 2000

4. FAO Technical Guidelines for Responsible Fisheries

87. FAO has published a number of technical guidelines in support of the implementation of the Code of Conduct, with respect in particular to the Code's requirements on Flag State responsibilities:

- "Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing". FAO Technical Guidelines for Responsible Fisheries, No. 9, 2002
- "Fisheries Management". FAO Technical Guidelines for Responsible Fisheries, No. 4, 1997
- "Fishing Operations". FAO Technical Guidelines for Responsible Fisheries, No. 1, 1996

II. Other relevant work undertaken by FAO

1. Other meetings and activities of relevance to the issue of flag State responsibilities

88. Other meetings and activities of relevance include the following:

(a) A joint FAO/IMO Ad Hoc Working Group on Illegal, Unreported and Unregulated Fishing and Related Matters was held in Rome from 9 to 11 October 2000. The meeting made a number of recommendations concerning port State controls and flag State controls;[63]

(b) An Expert Consultation to Review Port State Measures to Combat Illegal, Unreported and Unregulated Fishing was held at FAO headquarters, in Rome, from 4 to 6 November 2002. The consultation was convened with a view to facilitating the implementation of IPOA-IUU. The consultation also furthered collaboration with IMO, as called for in paragraph 90 of IPOA-IUU;[64]

(c) An Expert Consultation on Fishing Vessels Operating under Open Registries and their Impact on Illegal, Unreported and Unregulated Fishing was held at the Southeast Fisheries Science Center, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, in Miami, Florida, United States of America, from 23 to 25 September 2003. The experts focused on the effects of IUU fishing on global fishery resources and on lessons that might be learned from the experiences of flag States that had already implemented tighter control over the activities of their fishing vessels. Background papers presented to the consultation covered topics including: a global assessment of the extent of IUU fishing; fishing vessels operating under open registries and the exercise of flag State responsibility; standards relating to flag State responsibility over fishing vessels contained in recent international instruments; and the International Network for the Cooperation and Coordination of Fisheries-related Monitoring, Control and Surveillance Activities (International MCS Network). Three case-study presentations were also invited from experts from selected open registry countries (Cook Islands, Cyprus and Panama). A round-table discussion following the presentations led to the adoption of a number of recommendations for more effective application of flag State control over fishing vessels, particularly those operating under open registries, as a means to reduce the incidence of IUU fishing. The recommendations identified measures to be adopted by all States, flag States, coastal States and port States, as well as for assistance to developing States. Results of the Expert Consultation are intended to provide inputs for a Technical Consultation on IUU Fishing, Fleet Capacity and Subsidies planned for mid-2004, in accordance with a decision of the Committee on Fisheries at its twenty-fifth session in February 2003.[65]

2. Other activities of relevance under the FishCode Programme

89. When adopting the Code of Conduct, FAO member countries requested the organization to respond to the special requirements of developing countries through an Interregional Assistance Programme for the implementation of the Code (including the IPOAs and the Technical Guidelines). A special programme of global partnerships called FISHCODE was then established to promote responsible fisheries. The programme includes a global component focusing on normative issues related to specific articles of the Code of Conduct and a regional component dealing with aspects of Code implementation within specific geographical areas. Two components of the FISHCODE programme are of particular interest, one focusing on assistance to developing countries in implementation of the Code of Conduct in monitoring control and enforcement, and the other on support for the implementation of IPOA-IUU. A number of reports, articles and papers published by the FISHCODE programme may be of relevance to the work on flag State responsibilities:

- "Fishing Vessels operating under open registers and the exercise of flag State responsibilities. Information and options", by Judith Swan (Consultant, International Institutions and Liaison Service, FAO Fisheries Department). FAO Fisheries Circulars C980, 2002
- "Report of the National Workshop on Fisheries Monitoring, Control and Surveillance in support of Fisheries Management in Goa, India, 12-17 February, 2001". FAO/FISHCODE Project, GCP/INT/648/NOR, Field Report C-7 (En)
- "Final Report on Legal Advice to Thailand", by Ted McDorman (Legal Consultant). FAO/FISHCODE Project, GCP/INT/648/NOR, Field Report C-4 (En), 2000
- "Report of a Regional Workshop on Fisheries Monitoring, Control and Surveillance, held at Muscat, Sultanate of Oman, 24-28 October 1999." FAO/FISHCODE Project, GCP/INT/648/NOR, Field Report C-3 (En)
- "Report of a Regional Workshop on Fisheries Monitoring, Control and Surveillance, held at Kuala Lumpur and Kuala Terengganu, 29 June-3 July 1998. Supplement 2. Technical Papers". FAO/FISHCODE Project, GCP/INT/648/NOR, Field Report C-1/Suppl.2

3. FAO assistance to countries, including on the implementation of the 1993 FAO Compliance Agreement, the Code of Conduct, the IPOAs and other relevant fisheries-related instruments (including the 1982 United Nations Convention and the 1995 United Nations Fish Stocks Agreement)

90. FAO provides assistance and independent advice on agricultural (including fisheries) policy and planning, and on the administrative and legal structures needed for development. More specifically, FAO assists Governments in preparing national legislation (laws and regulations), agreements and other legal texts and advises on institutional structures and compliance with international law. Instrumental in carrying out these tasks is the introduction to countries, for possible implementation, of the international instruments developed under the auspices of FAO, and of course of other relevant international instruments they should implement. In the course of this work, a vast amount of comparative experience has been gained on current practices and conditions in countries, and on their varying needs and the challenges they face in making operational and functional the different requirements and approaches laid down in the international instruments mentioned in this paper.

91. Assistance is given to separate countries but also in the context of regional projects covering several countries. A number of regional workshops and seminars have had as their objectives the introduction of new international fisheries-related instruments, aimed not only at sensitizing countries to new approaches and developments but also at ensuring that the implementation process takes into consideration the regional or local conditions. In the course of this work a number of reports and papers have been produced during the past 10 years which may be of relevance to the issue of flag State responsibilities.

(a) Documents prepared under FAO projects of assistance to countries:

- "Assistance in Marine Fisheries Legislation in Angola", by José Luis Jesús, October 2003, under TCP/ANG/2901
- "Assistance in Marine Fisheries Legislation in Comoros", June 2003, by Patrice Talla (Legal Office, FAO), under TCP/COI/...
- "Assistance in Marine Fisheries Legislation in Gabon", February 2003, by Patrice Talla (Legal Office, FAO), under TCP/GAB/...
- "Establishment of Viet Nam's Fisheries Law and Regulations", reports prepared by W. R. Edeson, T. Lobach, H. Oostgard, A. Van Houtte and A. Wage, 2001-2003, under the Norway-Viet Nam Cooperation Project
- "Assistance in Fisheries and Marine Resources Management Legislation", March 2003, by Annick Van Houtte, under TCP/MDV/2801
- "Assistance in Marine Fisheries Legislation", by José Luis Jesús, September 2002. Assistance to Mozambique under TCP/MOZ/0170
- "High Seas Fishing Legislation — Draft Final Report", by Ilja Betlem (Legal Office, FAO), February 2002. Assistance to Barbados under TCP/BAR/0167 (A)
- "Review of the Fisheries Legislation of Saint Lucia — Report to the Government of Saint Lucia", based on the work by Gerald Moore, September 2001. Assistance to Saint Lucia under TCP/STL/0165 (A)

- "Assistance in marine fisheries legislation: Indonesia and international fisheries agreements", by Hasjim Djalal, March 2001. Assistance to Indonesia under TCP/INS/8922
- "Report on assistance to Tonga in fisheries legislation", by Blaise Kuemlangan (Legal Office, FAO), December 2000. Assistance to Tonga under TCP/TON/8923
- "High Seas Fishing Legislation — Final Report", by Ilja Betlem and Cristina Leria (Legal Office, FAO), August 2000. Assistance to Malaysia under TCP/MAL/8921 (A)
- "Assistance concerning flag States' responsibilities for fishing vessels under United Nations instruments — Report to the Government of Seychelles on Modification of National Legislation to Implement Fisheries Agreements", by Lawrence C. Christy (Legal Office, FAO). February 2000. Assistance to Seychelles under TCP/SEY/8921
- "Review of the Sea Fisheries Act — Report to the Government of South Africa", by A. Diemont, D. Devine W. R. Edeson, D. Fredericks, T. Papier and G. Ulfstein, February 1997. Assistance to South Africa under GCP/INT/606/NOR, Report No. FIMPLAP 96/46
- "Review of the Sea Fisheries Act — Report to the Government of Namibia", by Lawrence Christy (Legal Office, FAO), September-October 1996. Assistance to Namibia under GCP/INT/606/NOR, Report No. FIMPLAP 96/34

(b) Documents prepared under FAO projects with regional focus:

- "Development of Standards for the Construction and Inspection of Small Fishing Vessels". 2003. Organization of Eastern Caribbean States region. TCP/RLA/0069
- "Report of the Workshop on the Harmonization of Marine Fisheries Policy within Coastal Countries of the Southern African Development Community, Zanzibar, United Republic of Tanzania, 24-27 July 2001". FAO Fisheries Report No. 662
- "Report prepared for the Governments of the Organization of Eastern Caribbean States on the Implementation of Recent International Fisheries Agreements", by S. Hodgson and H. Walters, October 1996. GCP/INT/606/NOR, Report No. FIMPLAP 97/40

C. International Labour Organization

ILO and the maritime sector

(Prepared by the International Labour Office)

92. The present paper provides background information, a review of current measures being taken and a summary of recent studies by ILO on the question of flag State implementation. It focuses on two sectors: merchant shipping and fishing.

93. The main ILO web site concerning its work in the maritime sector is:

www.ilo.org/public/english/dialogue/sector/sectors/mariti.htm

I. Background information and review of current measures being taken concerning flag State implementation

1. Merchant shipping

(a) Background

94. All States aspire to achieving full social progress, as emphasized by the International Covenant on Economic, Social and Cultural Rights. The primary goal of the International Labour Organization is to promote opportunities for men and women to obtain decent and productive work, in conditions of freedom, equity, security and human dignity. Decent work means productive work in which rights are protected, which generates an adequate income, with adequate social protection. It also means sufficient work, in the sense that all should have full access to income-generating opportunities. The goal of providing decent work is as relevant to sea workers as it is to land workers. Men and women working on merchant ships and fishing vessels are therefore entitled to decent and productive work, in conditions of freedom, equity, security and human dignity.

95. The United Nations Convention on the Law of the Sea has placed on the flag State the primary responsibility for ensuring such conditions at sea. Article 94 of UNCLOS, "Duties of the flag State", provides that "Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag" (para. 1). It further provides that:

> "Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to:
>
> (a) The construction, equipment and seaworthiness of ships;
>
> (b) The manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;
>
> (c) The use of signals, the maintenance of communications and the prevention of collisions" (para. 3).

96. ILO Conventions and Recommendations, both core Conventions applying to all workers and specific maritime labour standards, are the applicable international instruments governing labour conditions. Between 1920 and 1996, ILO adopted 39 Conventions and other international instruments concerning the living and working conditions of seafarers.[66] These standards concern such matters as: training and entry into employment; conditions for admission to employment; certificates of competency; general conditions of employment; safety, health and welfare; labour inspection; and social security. Standards may include provisions for implementation by flag States, port States or labour-supplying States. While some Conventions have been ratified by more than 60 States, others have been ratified by only a handful.

97. A particularly important aspect of the maritime work of ILO is that not only Governments but also representatives of shipowners and seafarers are directly involved in the development of the standards. In this tripartite approach, all three groups have not only a voice but also a vote in the proceedings.

98. The work of ILO does not finish with creation of standards. A sophisticated supervisory mechanism established by the ILO Constitution goes beyond simple

unilateral compliance by States that have ratified Conventions and enables all three ILO constituents to follow up on the way standards are applied by the member States. To start with, the member States are obliged, pursuant to article 19 of the ILO Constitution, to bring a Convention adopted by the ILO Conference "before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action". Once the Convention has been ratified, its application will be the object of periodic reports made by the States to ILO on the basis of a specific format determined by the ILO Governing Body. These reports, submitted pursuant to article 22 of the ILO Constitution, are then examined by the Committee of Experts on the Application of Conventions and Recommendations as well as the International Labour Conference, or more specifically, its tripartite Conference Committee on the Application of Conventions and Recommendations. In addition to this "reporting" procedure, article 24 of the Constitution provides that an industrial association of employers or of workers can make a representation to the International Labour Office against any of the members that fail, in its view, to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party. Finally, a complaint submitted by a member State or by a delegate to the Conference pursuant to article 26 of the Constitution may lead to a Commission of Inquiry and eventually to a decision of the International Court of Justice.

99. The most comprehensive maritime labour standards are the provisions of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). Convention No. 147 provides, inter alia, that the member States ratifying it must undertake to have laws and regulations covering a wide range of issues and to exercise effective jurisdiction or control over ships which are registered in its territory in respect of those issues. Matters addressed include: safety standards, including standards of competency, hours of work and manning, appropriate social security measures, and shipboard employment and shipboard living arrangements, insofar as these, in the opinion of the member, are not covered by collective agreements or laid down by competent courts in a manner equally binding on the shipowners and seafarers concerned. Among other requirements, the member is to verify by inspection or other means that ships registered in its territory comply with applicable international labour Conventions in force which it has ratified, with the laws and regulations noted above and, as may be appropriate under national law, with applicable collective agreements. The member is to hold an official inquiry into any serious marine casualty. The Convention provides for port State control. The Protocol of 1996 to Convention No. 147 expands upon the matters covered by the Convention, in particular, by including the issue of limits on seafarers' hours of work or the provision of minimum periods of rest. Convention No. 147 has been ratified by 44 States in which are registered roughly 50 per cent of world shipping (by tonnage).

100. ILO is actively promoting the adoption of Convention No. 147 and its Protocol of 1996 through its Decent Work in the Maritime Industry programme.

101. Two other recently adopted standards of particular relevance to flag State implementation are the Labour Inspection (Seafarers) Convention, 1996 (No. 178) and its accompanying Recommendation (No. 185). Convention No. 178, inter alia, provides that a member State that ratifies the Convention shall ensure that all ships registered in its territory are inspected at intervals not exceeding three years, and when practicable, annually, to verify that seafarers' working and living conditions

on board conform to national laws and regulations. As of 12 August 2003, Convention No. 178 had only been ratified by eight countries.

102. All ILO Conventions and Recommendations are available on the Internet and may be viewed by visiting the ILO home page at www.ilo.org and clicking on the words "International Labour Standards". A listing of standards specific to the maritime sector can be found at: www.ilo.org/public/english/dialogue/sector/sectors/mariti/standards.htm.

103. On its own, or in collaboration with the International Maritime Organization, the World Health Organization, and other specialized agencies of the United Nations system, ILO has prepared several codes and guidelines providing guidance on flag State implementation of maritime labour standards. Examples include: *Inspection of labour conditions on board ship: Guidelines for procedure* (published in 1990) and the *IMO/ILO Guidelines for the Development of Tables of Seafarers' Shipboard Working Arrangements and Formats of Records of Seafarers' Hours of Work or Hours of Rest* (published in 1999).

104. ILO also participates, as an observer (and as resources permit), in the committees of a number of regional port State control agreements. This has resulted, particularly in the countries with maritime authorities signatory to the Paris Memorandum of Understanding on Port State Control, in pressure on ships (and, indirectly, on flag State authorities) to ensure that living and working conditions are at least at the standard of Convention No. 147. Article 4 of the Convention provides that the port State "may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health". As concerns the Convention, Port State control officers generally focus on safety and health matters (e.g., food, accommodation, medical equipment), as opposed to other matters (e.g., articles of agreement, sickness and injury benefits).

(b) Current measures being taken concerning flag State implementation

105. In keeping with recommendations by its bipartite Joint Maritime Commission and subsequent decisions by its Governing Body, ILO is in the process of consolidating its maritime labour Conventions and Recommendations into a single consolidated Framework Convention. The Governing Body has established a High-level Tripartite Working Group on Maritime Labour Standards for this purpose. This High-level Group and its Subgroup have met several times to discuss the structure and contents of the new standard. The Office (ILO secretariat) has prepared background documents text for consideration for these meetings and has prepared reports summarizing discussions at the meetings. These documents may be found on the ILO web site concerning its work in the maritime sector. Particularly relevant documents are noted in paragraphs 118 to 120 below.

106. The new standard is expected to be adopted by a Maritime Session of the International Labour Conference in 2005. It should have a substantial impact on the role of flag States as concerns working and living conditions on board ships.

107. Ensuring effective enforcement of the new Convention has been a major, essential issue throughout the preparatory work. The current draft of the Convention includes a title (one of five titles) which specifically addresses enforcement. The section is designed to place the various aspects of enforcement at the national level in a separate part encompassing the whole Convention, thus clearly defining the

roles of the various actors in the field of enforcement. It is envisaged that the new standard will include both traditional enforcement practices through inspection and sanctions and more contemporary practices aimed at ensuring continual compliance between inspections. The High-level Group has generally endorsed the adoption of some form of certificate-based system combined with other measures (existing ILO Conventions only provide for certificates of competency for certain positions and a medical fitness certificate). ILO member States ratifying the Convention would be required to establish a system for ensuring compliance with the Convention. The system would be subject to certain quality control measures still under discussion.

108. As indicated above, the consolidated Convention aims to place increased emphasis on the need for each member to evidence compliance with the standards of the Convention and to have an overall system of quality control and independent evaluation. Through these kinds of means, supervisory bodies are placed in the best possible position to follow implementation by ratifying members and are able to assess the extent to which the desired level playing field is de facto in place.

109. It is envisaged that a special tripartite maritime body, reporting to the ILO Governing Body, will be established to keep the Convention under continuous review. A simplified amendment procedure will facilitate keeping the technical provisions up to date with changes in the maritime sector. Consideration is also being given to providing for a greater role for Governments, shipowners and seafarers in the provision of advice to the existing ILO bodies responsible for the supervision of international labour standards.

110. Information concerning the development of the standard, including the reports prepared for meetings and the reports of meetings, is available on the ILO web site.

111. Other recent work relevant to flag State implementation is described under section II below.

2. Fishing

(a) Background

112. ILO has also adopted seven standards (five Conventions and two Recommendations) for the fishing sector. These concern the following issues: minimum age, medical examination, accommodation, articles of agreement, competency certificates, vocational training and hours of work. They can be viewed by visiting the web page concerning maritime labour standards, as noted above.

113. Moreover, ILO has adopted, on its own or in collaboration with the Food and Agriculture Organization of the United Nations, the International Maritime Organization, and other specialized agencies of the United Nations system, several codes and guidelines providing guidance on flag State implementation of maritime labour standards.

(b) Current measures being taken concerning flag State implementation

114. In keeping with decisions taken by its Governing Body, ILO is preparing a comprehensive standard (a Convention supplemented by a Recommendation) on work in the fishing sector. This new standard will revise the seven standards noted above and will be completed in 2005.

115. It is too early to determine how the new standard will improve flag State implementation. However, in its preparatory work the Office is seeking views on possible port State control provisions and a greater role by coastal States concerning labour conditions on fishing vessels operating in their exclusive economic zones. Information on the development of the standard is provided on the ILO web site.

II. Recent studies relevant to flag State implementation

1. Shipping

29th Session of the Joint Maritime Commission (22-26 January 2001)

116. At its most recent full session, the bipartite Joint Maritime Commission discussed, inter alia, a report entitled "The impact on seafarers' living and working conditions of changes in the structure of the shipping industry". The report provides considerable information concerning the conditions of work of seafarers. It examines some of the main changes that have occurred in world shipping and that have influenced the labour market and conditions of work and life in the shipping sector. It also addresses certain aspects of the labour market for seafarers as well as a number of changes that have had an impact on conditions of work, including the reduction in influence of national regulatory regimes and the impact of international recruitment on the employment of seafarers. The report discusses such issues as wages, hours of work, food, accommodation and welfare, as well as such issues as gender and abandonment of seafarers. The report ends with concluding remarks and points for discussion.

117. The Commission adopted a number of resolutions, including the resolution calling for the convening of the High-level Tripartite Working Group on Maritime Labour Standards described above (para. 105). In another resolution, concerning substandard shipping, the Commission expressed concern that a substandard shipping operation had been defined in terms of being substantially below the requirements established by the International Maritime Organization, without giving due regard to compliance with other international requirements. It therefore called for measures to be taken to ensure that applicable ILO social and labour standards were given due consideration in determining whether a ship or operation was substandard. In still another resolution, the Commission noted that the issue of flags of convenience had been on the agenda of Conferences of ILO since 1933 and that despite several reports, enquiries, Conventions, Recommendations and resolutions on the issue, it had remained one of deep concern for seafarers. This last resolution led to the convening of a meeting of experts on international registers (see paras. 122-126 below).

Meetings of the High-level Tripartite Working Group on Maritime Labour Standards and its Subgroup (ongoing)

118. As noted above, a number of reports have been produced for and by the High-level Group and its Subgroup that are relevant to the issue of flag State implementation, in particular:

- An analysis of the essential aspects of decent work in the maritime context (STWGMLS/2002/5)

- Considerations for provisions on inspection and control in a consolidated maritime labour Convention (TWGMLS/2002/1)

119. The report entitled "An analysis of the essential aspects of decent work in the maritime context" attempts to identify the issues involved in the application of the concept of decent work to merchant shipping. The extent to which principles of decent work are part of ordinary practice in the maritime industry is analysed in detail. The report concludes that there are still some outstanding issues to be addressed, which would need to be taken into account by the consolidation efforts.

120. The report entitled "Considerations for provisions on inspection and control in a consolidated maritime labour Convention" focuses on the main ingredients for possible provisions for the consolidated Convention's enforcement system. It proposes a set of elements based on the various solutions and ideas identified for strengthening inspection and control. Moreover, it suggests a central role for the flag State and devises internal complaint and resolution procedures as an important means of achieving accountability of substandard flag States or shipowners as well as of disseminating information on substandard ships.

121. The evolving draft of the Convention will be posted on the ILO web site. Attention is directed to the articles, titles, regulations and code (both mandatory and recommendatory) concerning enforcement. These include provisions not only related to the roles of flag States in enforcement but also the roles of port States and labour-supplying States.

Meeting of Experts on Working and Living Conditions of Seafarers on board Ships in International Registers (Geneva, 6-8 May 2002)

122. A number of background documents were prepared for this meeting.

123. Report 1 provides the results of an investigation of the factors and variables that influence the living and working conditions of seafarers and documents customary practice. The information was gathered through a survey on: (a) general questions concerned with the inspection of living and working conditions, restrictions on the use of foreign seafarers, legislation, and collective agreements for nationals and non-nationals; (b) employment conditions within flag States, with questions focused on recruitment issues, minimum age, wages, health and social security; and (c) questions for labour-supplying countries, with an emphasis on the extent to which domestic legislation may protect seafarers working on vessels flying foreign flags. The study highlights the wide diversity in seafarers' living and working conditions in an industry undergoing substantial economic and social change. It confirms the need to reshape and enforce regulation at the national and international levels in order to safeguard the industry and the seafarers employed in it.

124. Report 2 provides case studies on the shipping registers of Denmark, India, the Isle of Man, Panama and the Philippines with regard to labour issues.

125. Report 3 draws conclusions from the global study in report 1 and the case studies in report 2. It concludes, inter alia, that the regulatory structure of certain open registers, while elaborate with regard to, for example, technical safety issues, often seems to fall short with regard to social issues, especially as concerns enforcement. The issue also arises as to whether certain flag States have the capability or desire to intervene in order to enforce their own shipping regulations.

126. The final report of the Meeting of Experts contains a summary of the proceedings of the meeting and a *Consensual Statement of the Meeting of Experts*. Paragraphs 58 through 60 of the report, which set out views of the Shipowner, Seafarer and Government groups, as well as the full text of the *Consensual Statement of the Meeting of Experts* (see para. 136 below), are particularly relevant to the issue of flag State enforcement.

Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers

127. The Joint IMO/ILO Working Group has met five times in recent years. The documents listed below are particularly relevant to the work of the Consultative Group. They provide background information concerning problems relating to claims resulting from the death or personal injury of seafarers and the problem of abandonment of seafarers, summarize the discussions by the Joint Working Group on these issues and set out the solutions proposed, including two joint resolutions aimed at IMO and ILO member States.

- Report of the first session of the Joint Working Group, in particular the conclusions, as provided in paragraphs 11.1 to 11.6 (see especially para. 11.5)
- Report of the third session of the Joint Working Group, in particular the draft resolutions on Guidelines on Provision of Financial Responsibility in Case of Abandonment of Seafarers and on Guidelines on Shipowners' Responsibilities in Respect of Contractual Claims for Personal Injury to or Death of Seafarers (the draft resolutions have since been finalized and agreed by both IMO and ILO)
- Report of the fourth session of the Joint Working Group (appended to GB.286/STM/3), in particular annex 2, which provides a "Questionnaire on monitoring of Resolutions and Guidelines concerning the Provision of Financial Security in case of Abandonment of Seafarers", and annex 3 concerning Guidelines on Shipowners' Responsibility in Respect of Contractual Claims for Personal Injury to or Death of Seafarers and a "Questionnaire to States on Implementation"
- Report of the fifth session of the Joint Working Group, in which the Group reiterated its request to Governments for reports on incidents of abandonment and for replies to the questionnaire concerning the monitoring and implementation of guidelines on provision of financial security in case of abandonment of seafarers. The Group also agreed that the time had come to request the Governing Body of ILO and the IMO Legal Committee to authorize the Group to proceed with the development of a longer-term sustainable solution to address the problems of financial security with regard to compensation in case of death and personal injury.

128. These documents can be found on the ILO web site at:

www. ilo.org/public/english/dialogue/sector/sectors/mariti.htm

Other publications

129. ILO will shortly publish two books concerning the shipping sector which will be of relevance to enforcement. The first concerns seafarers in general; the second concerns women seafarers.

130. *The Global Seafarer* offers an account of the effects of globalization on the shipping industry and seafarers' lives. It discusses recruitment practices, trade unions and collective bargaining, as well as training, certification and fraudulent certification. Other questions dealt with include wages, contracts and tours of duty, as well as in-depth treatments of seafarer safety and hazard exposure.

131. *Women Seafarers* focuses on contemporary women seafarers at the global level. It addresses a host of issues surrounding the working conditions and welfare of women, from both developed and developing countries, employed aboard the world's merchant and passenger ships. Drawing on extensive research, the book considers women's participation levels in the industry and examines policies concerning their recruitment, training, maternity and employment rights, and other aspects of work and life at sea. It also offers first-hand accounts from women seafarers describing how they have dealt with discrimination, sexual harassment, parental disapproval and an array of other difficulties. The practices and policies of national and international regulatory agencies, employers, trade unions and maritime education institutions are analysed and followed by a series of recommendations that may further help the integration of women into shipboard communities.

2. Fishing

Tripartite Meeting on Safety and Health in the Fishing Industry (Geneva, 13-17 December 1999)

132. The *Note on the Proceedings* of this meeting may be of interest, in particular the conclusions and the resolution concerning future ILO activities in the fisheries sector and concerning social dialogue.

Preparation of a comprehensive standard (a Convention supplemented by a Recommendation on work in the fishing sector) (ongoing)

133. The Office has recently published report V(1) for the 92nd session of the International Labour Conference. The report, entitled "Conditions of work in the fishing sector: a comprehensive standard (a Convention supplemented by a Recommendation) on work in the fishing sector", contains information on law and practice in member States and contains a questionnaire addressed to member States on the possible form, scope and content of the new instrument. Enforcement issues are discussed throughout the report and, in particular, in a chapter concerning administration, enforcement, consultation and coordination.

134. The documents concerning the work of ILO in the fishing sector can be found at:

www.ilo.org/public/english/dialogue/sector/sectors/mariti/fishing-iloact.htm

III. Solutions, remedies and strategies

135. Consideration should be given to the following:

> 1. States which have not done so should ratify ILO maritime labour standards, in particular the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) and its Protocol of 1996.
>
> 2. States should be encouraged to become involved in the preparation of the ILO consolidated framework Convention for the merchant shipping sector and in the preparation of its comprehensive standard for the fishing sector. Involvement should include national discussions on this preparatory work and on measures to be taken to implement the new standards once they are adopted.
>
> 3. States should be encouraged to take into account the Consensual Statement of the Meeting of Experts on Working and Living Conditions of Seafarers on board Ships in International Registers (see para. 136).
>
> 4. States should implement the ILO/IMO resolutions on Guidelines on Provision of Financial Responsibility in case of Abandonment of Seafarers and on Guidelines on Shipowners' Responsibilities in Respect of Contractual Claims for Personal Injury to or Death of Seafarers.
>
> 5. Specialized agencies of the United Nations system with a role in flag State implementation should participate in the development of new ILO standards for the merchant shipping and fishing sectors. Consideration should be given to developing a system for the continuous exchange of information concerning flag State implementation.
>
> 6. Consideration should be given to ways of increasing the role of employer (shipowner) and worker (seafarer) representative organizations at international debates concerning flag State implementation.
>
> 7. Meetings of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea should be timed so as not to coincide with major international Conferences of other specialized agencies of the United Nations system.

136. The full text of the Consensual Statement of the May 2002 Meeting of Experts (see paras. 122-126 above) is reproduced below:

> **Consensual Statement of the Meeting of Experts on Working and Living Conditions of Seafarers on board Ships in International Registers (Geneva, 6-8 May 2002)**
>
> 1. The experts consider this tripartite Meeting to be an opportunity to continue the multifaceted drive of Governments, seafarers and shipowners already under way to improve the living and working conditions for all seafarers regardless of nationality or domicile.
>
> 2. The experts stress the need for the strongest possible national and international measures to be taken against breaches of international labour standards, including violations of freedom of association and the right to

organize and collective bargaining, which undermine decent living and working conditions for seafarers.

3. The experts consider that it is urgent to effectively address the decent work deficits in the shipping industry. It is recognized that conditions of employment, social protection, social security and social dialogue, including collective bargaining, are matters that will require particular attention. To this end, the experts recognize the importance of the decent work at sea programme and invite the Governing Body to instruct the Office to secure further action, in consultation with the constituents.

4. The experts recognize that consideration should be given to a possible mechanism by which a performance measurement for flag States in respect of ILO instruments might be introduced.

5. The experts consider that, in the context of enforcement, due consideration should be given to the relevant provisions of UNCLOS and the relevant provisions of the ISM Code.

6. The experts stress the importance of the following principles and rights.

(1) In order to effectively exercise its jurisdiction in social matters, every State shall have a sound maritime administration with a firm legislative framework complying with, as a minimum, international labour standards, and a strong enforcement mechanism;

(2) The flag State has the overall responsibility for ensuring that the rights of seafarers are respected in relation to service on board ships flying its flag;

(3) Every flag State shall have in place means to enforce decent living and working conditions on ships flying its flag wherever they may be in the world;

(4) Every State shall ensure that manning agencies for seafarers legally established within its jurisdiction are subject to government control and shall ensure that seafarers' rights are respected;

(5) All States shall have in place the necessary mechanism for monitoring living and working conditions on ships visiting their ports, in accordance with international instruments in force;

(6) All inspectors responsible for the control of living and working conditions shall be properly qualified, trained and shall have clear terms of reference;

(7) Every flag State should ensure that shipowners are responsible for making available to the seafarers the applicable laws, regulations and collective agreements addressing their living and working conditions and should, in accordance with national law and practice, ensure that they are enforced;

(8) All States shall provide easy access to simple and inexpensive procedures enabling all seafarers, regardless of nationality and domicile, to make complaints alleging a breach of national legislation on living and working conditions or employment contracts and/or articles of agreement;

(9) All shipowners shall provide and be responsible for safe and decent working conditions for seafarers they employ or engage;

(10) In States where manning agencies are legally established, the manning agencies shall be made jointly and severally liable with shipowners, regardless of their domicile, for breach of the contract of employment and/or articles of agreement.

D. United Nations Environment Programme

(Prepared by the secretariat of UNEP)

137. Marine emergencies and large-scale oil spills involving sub-standard ships and tankers have a dramatic impact on the marine and coastal environment, for which UNEP has direct responsibilities. However, UNEP does not have a direct role in the legal or institutional aspects related to flag State control.

138. The present report concentrates on the three main avenues through which UNEP may contribute to the prevention of, preparedness for and response to major oil spills, and thereby contribute to safer and cleaner oceans.

1. Regional seas: providing a platform for regional implementation of global conventions related to oil spill preparedness and response

139. The Regional Seas programme provides a major legal, administrative, substantive and financial framework for the implementation of Agenda 21 and its chapter 17 on oceans in particular and is based on periodically revised action plans adopted by high-level intergovernmental meetings and implemented, in most cases, within the framework of legally binding Regional Seas Conventions, under the authority of the respective Contracting Parties or intergovernmental meetings. The regional seas programmes offer a technical, scientific, legal and institutional framework to facilitate the effective implementation of international agreements at the regional and subregional levels.

140. The UNEP Regional Seas programme is based on regional action plans, related to a common body of water, adopted by high-level intergovernmental meetings and implemented, in most cases, in the framework of a legally binding regional seas convention and related protocols which have a technical perspective, for example, cooperation in case of emergencies from maritime-related activities.

141. Today more than 140 countries participate in 13 regional seas programmes established under UNEP auspices: Black Sea, Caribbean, East Africa, East Asia, Kuwait Convention region, Mediterranean, North-East Pacific, North-West Pacific, Red Sea and Gulf of Aden, South Asia, South-East Pacific, South Pacific, and West and Central Africa. There are also five partner programmes, for the Antarctic, the Arctic, the Baltic Sea, the Caspian Sea and the North-East Atlantic.

142. Each programme is tailored to the specific needs of its coastal States, but is based on similar components:

- An action plan for regional cooperation on the management, protection, rehabilitation, sustainable development, monitoring, research and assessment of coastal and marine resources
- An intergovernmental agreement to a framework convention embodying general principles and obligations (although in some cases, programmes operate without legally binding agreements)
- Detailed technical protocols dealing with particular environmental problems related to the protection of the marine environment, such as accidental spill preparedness, response and cooperation in emergencies, dumping at sea, biodiversity and protected areas and land-based activities

An important concept promoted by UNEP is the message that the regional seas programmes offer a valuable platform for regional implementation of global programmes, global initiatives, global conventions (multilateral environmental agreements (MEAs)) and programmes of work of international organizations which are aimed at the sustainable management and the protection of the marine and coastal environment.

143. The main objective of this short report on UNEP and the international regimes or initiatives for the reduction of risk of oils spills from sub-standard tankers, such as flag State control, is to demonstrate the role of the UNEP regional seas programmes as an instrument for regional implementation in the development, monitoring, implementation and enforcement of this global initiative, which originated within IMO.

144. Prevention, preparedness and response to marine pollution from ship-related activities are regulated at the global level through global conventions, mostly adopted by IMO. Regional arrangements related to marine-based pollution prevention and response are aimed at organizing cooperation for efficient and effective implementation of the global conventions and express the political commitment of the Governments of a given region to cooperate on this matter. Since shipping is a worldwide activity for which regulations have been adopted at the global level, the secretariats of the various regional seas programmes and their dedicated regional accidental pollution response centres can be used as an existing, effective platform for improved and coordinated regional implementation of international agreements, programmes and initiatives related to ship-generated and marine-based pollution.

145. Some of the regional seas programmes (the Mediterranean, the Caribbean, the North-West Pacific, the Regional Organization for the Protection of the Marine Environment (ROPME)/Kuwait Convention sea area) have established specialized and dedicated regional activity centres which are in most cases operated jointly by IMO and UNEP and are aimed at addressing prevention, preparedness and response to marine-based emergencies and pollution incidents. For the most part, these regional activity centres consist of a pool of resources/expertise to assist contracting or member countries in their efforts to develop national contingency plans and national capacities but also a tool for the promotion of bilateral and multilateral cooperation in preparedness and response. In addition to this overall responsibility, some centres have developed their own specialization or practice according to the

needs in the region, each utilizing a network of participating scientific, academic and policy institutions from the regions relevant to the particular centre's mandate.

2. An existing regional structure: the case of the Mediterranean

146. The Mediterranean Action Plan (MAP, under the Barcelona Convention) is an example of regional cooperation in the field of protection of the marine environment from maritime accidents and illegal discharges from ships. The concern of the MAP member States over major accidents (but also smaller-scale incidents and operational discharge of oil from shipping and oil transport activities) gave rise to the establishment and operation of the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC), based in Malta.

147. For demonstration purposes REMPEC was selected as an example of the platform that may be provided for the implementation of the flag State regime. It is the aim of UNEP to develop in all regional seas conventions and action plans regional activity centres that will follow the REMPEC model.

(a) The institutional framework

148. The Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea was established in 1976 to assist the Mediterranean coastal States in the development of their national preparedness and response systems and in the preparation and implementation of their national contingency plans for marine pollution from ship-related activities. The Centre aims to strengthen the capacities of the coastal States in the Mediterranean region with a view to preventing pollution from ships and ensuring the effective implementation of the rules which are generally recognized at the international level. REMPEC also aims to develop and facilitate regional cooperation not only in the fields of preparedness and response in combating accidental marine pollution, but also in the field of prevention of pollution from oil tankers and other ships. The Centre has developed a regional system for alerting and communication in case of a marine pollution emergency and plays a crucial role in promoting effective implementation of the relevant international regulations, including the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) and the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC 1990), by the flag States, port States and coastal States as applicable.

149. REMPEC is currently implementing a project on port reception facilities in the Mediterranean. The project aims to reduce pollution of the Mediterranean Sea by ship-generated solid wastes and oily waters and residues. More specifically it aims to promote, in accordance with annexes I and V to MARPOL 73/78, the installation of port reception facilities for the collection of garbage, bilge water and oily residues generated by ships.

150. UNEP and IMO also jointly operate or facilitate the operation of the Marine Environmental Emergency Preparedness and Response Regional Activity Centre in the North-west Pacific Action Plan (NOWPAP/MERRAC), located in Daejon, Republic of Korea; the Regional Activity Centre of the Regional Marine Pollution Emergency, Information and Training Centre for the Wider Caribbean Region (RAC/REMPEITEC-Carib), in Curacao, Netherlands Antilles; the Emergency Response Centre for the Black Sea in Varna, Bulgaria; and the Marine Emergency Mutual Aid Centre (MEMAC) in Manama, Bahrain, for the ROPME region.

(b) A focus on prevention

151. Regional legally binding agreements are needed to enable effective regional cooperation and to provide the legal basis for the relevant authorities to secure support and funding. The adoption of a new MAP Protocol to the Barcelona Convention concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea (Prevention and Emergency Protocol), in 2002, gave REMPEC the necessary legal basis to concentrate its efforts in tackling the problem of both operational and accidental pollution from ships. As a legal instrument complementing the Convention, the Prevention and Emergency Protocol sets out the main principles of cooperation in dealing with threats to the marine environment and coasts posed by accidental releases or by accumulations of small discharges of oil or other harmful substances.

152. With the adoption of the Prevention and Emergency Protocol, the States in the Mediterranean have seized the opportunity to establish a strategy on a sound legal basis and now have the necessary legal framework which has given them the possibility to work together to reduce the impact of shipping operations and, in cooperative action, to tackle issues of importance such as port reception facilities, the management of ballast water, surveillance of operational discharges and prosecution of offenders, ports and places of refuge for ships in distress, navigational safety and navigational aids.

153. Legal benefits achieved by the new Prevention and Emergency Protocol include, first, the fact that, while the previous Protocol was dedicated to the cooperation between coastal States of the Mediterranean in the field of preparedness and response in case of maritime accidents which pollute or threaten to pollute the sea, the new Prevention and Emergency Protocol, in addition to preparedness and response, addresses pollution prevention from ships. Secondly, while the previous Protocol only focused on the role of the coastal State, which is at the front line for responding to accidental pollution or the threat of accidental pollution, the new Protocol, in accordance with the international law of the sea, calls for the contribution and participation of a number of parties, i.e., the coastal State, as well as the flag State, with regard to flag State control; and the port State, particularly with regard to the provision of adequate port reception facilities, the reception of ships in distress in ports and the provision of place of refuge. The enforcement by riparian States of the broad range of duties assigned by the new Protocol to coastal States, flag States and port States will certainly constitute the right means to finally control all aspects of pollution by ships in the Mediterranean.

154. More specifically with regard to pollution prevention, one of the future aims of REMPEC and other regional seas dedicated centres is to improve the standard of flag State and port State inspections by developing a uniform regional standard for vessel inspection procedures and to improve the knowledge and expertise of inspection officers by establishing, through the centres, a programme of training for such personnel.

(c) Preparedness and response

155. In addition to the legal and institutional components, the specialized regional activity centres operating as a part of the regional seas secretariats, may contribute to the operational aspects of response in combating and mitigating the actual spills once the oil has reached the sea water.

156. As an example of the above, the Mediterranean Assistance Unit for responding to accidental marine pollution has been formed within the framework of the MAP Emergency Protocol and is operational within the terms of reference of REMPEC. Experts sent to the scene of an accident as part of the Mediterranean Assistance Unit provide advice and technical expertise to the authorities to assist them during the initial phases in deciding on the appropriate response measures and on the additional necessary assistance to be provided. Another role of the Unit is to help the requesting State to implement the provisions for regional cooperation in case of emergency, particularly through the arrangements and procedures adopted by the Contracting Parties aimed at facilitating cooperation and mutual assistance.

157. One of the main objectives of the OPRC 1990 Convention is to develop cooperation at the global level and facilitate assistance with response to pollution. When the response capability of a region is not sufficient to face an emergency situation, assistance can be obtained directly from parties to the OPRC 1990 Convention or through IMO under the Convention. Procedures for joint response operations should be developed as part of the preparedness and response system, using the guidelines of IMO, particularly with regard to the administrative arrangements such as customs and immigration matters. Cooperation between IMO and UNEP has played a significant part in developing regional arrangements for cooperation in oil pollution preparedness and response, and regional agreements have now been adopted in most regions of the world. Under these agreements, regional and subregional contingency plans have been established in many parts of the world, thereby ensuring the efficient integration of the marine pollution response mechanisms into the general framework of the regional seas conventions and programmes.

158. Prior to the adoption of the OPRC 1990 Convention, IMO, UNEP and other organizations for many years actively cooperated in encouraging the development of regional arrangements for combating marine pollution in case of emergency. This cooperation has resulted in the development of intergovernmental regional agreements that commit groups of States and the secretariats of those regional conventions to cooperate in responding to major incidents of marine pollution that are likely to affect more than one State. This commitment is reinforced in several regions by the establishment of regional and subregional contingency plans and regional centres. Furthermore, in article 10 of the OPRC 1990 Convention the parties are urged to implement its provisions through bilateral and regional mechanisms.

3. Inter-agency cooperation

159. There is a self-evident need for inter-agency cooperation in developing global and regional strategies responding to the necessity for preventing and minimizing environmental and economical consequences caused by major tanker accidents.

160. To that end, UNEP and IMO jointly organized in 1985 a meeting of experts on regional arrangements for cooperation in combating major incidents of marine pollution. The primary purpose of the meeting was to encourage regional and interregional cooperation in combating major accidents of marine pollution.

161. A more recent development is the establishment, in October 2002, of a joint IMO/UNEP Forum on Regional Arrangements for Cooperation in Combating Marine Pollution Incidents. The main objective of the forum is to bring together representatives of the secretariats and the regional centres of the different regional seas conventions and action plans in order to exchange experiences and to discuss issues of common concern as well as to discuss activities and programmes implemented in the regions and subregions, including between those which have acquired considerable experience in implementing regional counter-pollution arrangements and those which are in the early stages of implementing such arrangements. The goal of the forum is to make recommendations for future interregional and inter-agency cooperation and international assistance among the regional entities and to identify areas for possible harmonization of procedures and collaboration.

4. Conclusion

162. The UNEP Regional Seas programme, through the regional secretariats and the dedicated oil spill preparedness and response regional activity centres, may provide an effective platform for the regional development and implementation of flag State control and other relevant measures to prevent and reduce the environmental and economical damage caused by large oil spills.

163. Inter-agency cooperation is required for joint establishment and to increase the effectiveness of the implementation of such initiatives, resulting in increased monitoring and enforcement of measures at the regional and national levels.

E. United Nations Conference on Trade and Development

The United Nations Conference on Trade and Development and flags of convenience

(Prepared by the UNCTAD secretariat)

164. Over the past 25 years UNCTAD has to varying degrees been involved in the question of ship registration, open registries and their impact on world shipping. In 1978, a major report on flags of convenience was produced by UNCTAD[67] which brought the issue to the forefront of international scrutiny. There was wide agreement at the time that flags of convenience constituted a major threat to the beneficial development of international shipping and a major impediment to the transfer of shipping activities to developing countries. In that context an extensive debate took place on the economic, social and environmental impact of the increasing use of open registries. The involvement of UNCTAD in the issue of open registries culminated in the adoption of the United Nations Convention on Conditions for Registration of Ships in 1986. Since that time, the work of the UNCTAD secretariat on the issue has centred around the quantitative analysis of the flag of convenience phenomenon through the annual review of maritime transport,

as well as assistance on demand to countries wishing to become parties to the Convention or implementing elements of the Convention in their national legislation on ship registration.

United Nations Convention on Conditions for Registration of Ships 1986

165. The question of phasing out open registers and conditions for registration of ships was a subject of discussion within UNCTAD for over a decade. The fifth UNCTAD Ministerial Conference, held in Manila in 1979, adopted by majority vote resolution 120(V) in which it took note of the desire of many countries to phase out open registry operations, and requested further studies, including on "the repercussions of phasing out open registries, its economic and social impact on economies of developing countries, its effect on world shipping" and "the feasibility of establishing a legal mechanism for regulating the operation of open-registry fleets during the phasing-out period".

166. The publication of a number of studies and intensive debates at the intergovernmental meetings did not lead to agreement on the open-registry issue. It was therefore apparent that the initial objective of the work was unattainable. The discussion was then focused on the desirability of the existence of a "genuine link" between a vessel and the country that accepted it on its national shipping register. While the concept of "genuine link" already existed in the 1958 Convention on the High Seas and the 1982 United Nations Convention on the Law of the Sea, neither of those Conventions provided a definition of the genuine link.

167. Following protracted deliberations within an Intergovernmental Preparatory Group and a four-part United Nations Conference, under the auspices of UNCTAD, the Convention on Conditions for Registration of Ships was adopted on 7 February 1986. The Convention establishes the minimum elements of the "genuine link" that should exist between a ship and the State whose flag it flies. Thus article 1 of the Convention sets out its objectives as follows:

> "For the purpose of ensuring or, as the case may be, strengthening the genuine link between a State and ships flying its flag, and in order to exercise effectively its jurisdiction and control over such ships with regard to identification and accountability of shipowners and operators as well as with regard to administrative, technical, economic and social matters, a flag State shall apply the provisions contained in this Convention."

168. Articles 8, 9 and 10 aim at establishing economic links between a ship and the flag State by providing for participation by nationals of the flag State in the ownership, manning and management of the ship. Article 6 dealing with identification and accountability requires a State to take the necessary measures to ensure that owners and operators of a ship on its register are "adequately identifiable for the purpose of ensuring their full accountability". The Convention includes provisions of both a mandatory and a non-mandatory nature, which dilutes its effectiveness to a considerable extent.

169. The Convention is to enter into force when ratified by 40 States representing 25 per cent of world tonnage.

170. Almost 20 years have elapsed since the adoption of the Convention. The evolution of the events since that time, and particularly those of 11 September 2001, have shown that building the requirements and conditions for registration of ships

mainly on "genuine link" criteria, as defined by the 1986 Convention, is not sufficient. Tighter control is required of a State accepting a vessel in its register. The time may be ripe to revisit the Convention with a view to determining the amendments and modifications required to adapt it to meet the current security requirements.

Open-registry countries and their fleet

171. Since 1968, UNCTAD has been reporting about open-registry countries in its annual publication *Review of Maritime Transport*. The present section summarizes information from different years to highlight the main features of open registers over the long run and reviews the developments leading to the adoption of the United Nations Convention on Conditions for Registration of Ships.

172. The distinctive feature of open registers is the vague, or non-existent, link between the flag of registration and the ship. Article 1 of the 1986 United Nations Convention on Conditions for Registration of Ships states that its aim is to strengthen "the genuine link between a State and the ships flying its flag". As of 31 July 2003, only 11 countries (Bulgaria, Côte d'Ivoire, Egypt, Georgia, Ghana, Haiti, Hungary, Iraq, Libyan Arab Jamahiriya, Mexico and Oman) were Contracting Parties to the Convention.

173. Over the years a number of countries have been classified as open-registry countries. The six countries indicated in table 1 have consistently been included in the list of major open-registry countries which appears in the *Review of Maritime Transport* of UNCTAD. In 2003, the top two countries accounted for 66.1 per cent of the open-registry fleet, while their share in 1970 was 95.7 per cent, which is a clear indication of the proliferation of registers offering flag of convenience facilities.

Table 1
Fleet size of open-registry countries[a]

	Millions of dwt for selected years				
Country	*2003*	*2000*	*1990*	*1980*	*1970*
Panama	186.4	158.9	62.2	39.0	8.9
Liberia	77.0	85.2	99.2	158.0	58.5
Bahamas	49.6	44.9	22.4		
Malta	42.6	46.7			
Cyprus	36.0	36.7	33.0	3.0	1.7
Bermuda	7.0	10.4	7.8		

[a] Vessels over 100 grt.

174. Apart from the major open-registry countries there have always been a number of smaller registers that were considered as open registers. And over the years, there have been changes in the list of open-registry countries. By the 1990s, Singapore, Oman and Somalia had been excluded, while Malta, Bermuda and Vanuatu were included. Today, the registers of Antigua and Barbuda, Belize, Bermuda, Cambodia, Cayman Islands, Costa Rica, Honduras, Mauritius, Sao Tome and Principe, Vanuatu

and Saint Vincent and the Grenadines are considered to be among those offering flag of convenience facilities.

175. The negligible ownership of nationals of open-registry countries in their fleets is apparent from table 2. Most of the entries are nil, with the exception of Cyprus, where national participation has nevertheless decreased considerably since 1990.

Table 2
National participation in open-registry fleets

	Percentage participation of nationals of open registers				
Country	*2003*	*2002*	*2001*	*1993*	*1991*
Panama	0.0	0.0	0.0	0.0	0.1
Liberia	0.0	0.0	0.0	0.0	0.0
Bahamas	0.0	0.0	0.5	0.4	0.2
Malta	0.0	0.1	0.1	..	2.1
Cyprus	2.6	2.3	2.4	8.4	12.1
Bermuda	0.0	0.0	0.0	0.0	0.0

176. Since the 1970s, the share of the open-registry fleet in the world fleet has more than doubled, passing from 21.6 to 47.2 per cent in 2003 (see table 3). The open-registry fleet increased by 5.6 times, more than double the increase of the world fleet, which over the same period rose by 2.5 times.

Table 3
World and open-registry fleets[a]

Date	*World fleet (million dwt)*	*Open-registry fleet countries (million dwt)*	*Percentage share of open-registry fleet countries*
1 July 1970	326.1	70.3	21.6
1 July 1980	682.8	212.6	31.1
1 July 1990	658.4	224.6	31.1
1 January 2000	799.0	384.7	48.1
1 January 2003	844.2	398.5	47.2

[a] Ships over 100 grt.

177. The structure of the open-registry fleet is indicated in table 4. Bulk carriers and tankers make up about three-quarters of the open-registry fleet.

Table 4
Structure of open-registry fleet by type of vessel

		Percentage share of open-registry fleet per type of vessel				
Date	*Total fleet (million dwt)*	*Tanker*	*Bulk carrier*	*General cargo*	*Container ships*	*Other ships*
1 January 2000	384.7	37.0	39.4	10.2	6.6	6.8
1 January 2003	398.5	37.1	41.1	8.3	9.2	4.2

178. The share of the world fleet by vessel type registered in open registries is indicated in table 5. The impact of open registers is greater in the bulk carrier market, where its share is above 50 per cent. The effect in the tanker and container markets is also significant. It is particularly in the container ship segment where open registries have made the most important inroads.

Table 5
World share of open-registry fleet by type of vessel

	Percentage share of world fleet by vessel type registered in open registries				
Year	*Tankers*	*Bulk carriers*	*General cargo*	*Container ships*	*Other vessels*
1970	26.4	24.1	7.6	1.0	3.6
1980	36.2	31.7	20.8	13.5	17.0
1990	41.6	33.2	26.2	21.1	24.2
2000	50.8	55.0	36.5	40.6	38.2
2003	48.6	54.6	34.1	44.4	28.3

179. As indicated in table 6, the average ages of the world and open-registry fleets have been similar, both for the overall fleet as well as for most types of vessels. However, the more favourable age structure in the bulk carrier and general cargo sectors has in recent years resulted in slightly younger fleets of open registries compared to the total world fleet.

Table 6

Age of world and open-registry fleets by type of vessel

Year	*Fleet*	*All ships*	*Tanker*	*Bulk carriers*	*General cargo*	*Container ships*	*Other ships*
1970	World	9.3	..	..	..	..	..
	Open-registry	9.8	..	..	..	..	..
1980[a]	World	9.9	8.9	9.1	13.2	..	..
	Open-registry	9.6	8.5	9.1	14.8	..	..
1990[a]	World	14.1	15.3	12.9	15.0	10.4	13.1
	Open-registry	15.1	16.3	14.6	14.3	9.3	12.9
2000[b]	World	14.5	15.0	13.6	17.3	11.0	15.6
	Open-registry	14.3	14.8	13.5	16.4	11.3	15.5
2003[b]	World	12.6	11.6	12.7	17.0	8.9	16.0
	Open-registry	12.1	11.6	12.0	15.8	9.1	16.0

[a] Estimated on the basis of grt at mid-year.

[b] Estimated on the basis of dwt at the beginning of the year.

Main maritime countries

180. The open-registry fleet is closely related to the fleet of the main maritime countries because many of these countries flag out their vessels to open registers. Table 7 lists the 35 most important world maritime countries, which accounted for about 94 per cent of the world fleet in 1990 and 2003. It also indicates the percentage of each country's fleet flagged out to any other country, including open-registry countries. In 2003, these 35 most important countries flagged out a total of 465.8 million dwt, of which 76.4 per cent corresponded to the six major open-registry countries.

181. From year to year there are minor changes in the countries listed, notably at the bottom of the table: Between 1 July 1989, the first time the list was prepared, and 1 July 1990, Indonesia replaced Romania; and between 1 January 2002 and 1 January 2003, Chile replaced the United Arab Emirates. Many of these countries have a substantial share of their fleets under foreign flags, while only a few maintain their fleets exclusively under the national flag.

Table7
Main maritime countries — rank and fleet size[a]

Country	Status at 1 January 2003 Rank (million dwt)	Per cent flagged out	Percentage of world fleet	Status at 1 July 1990 Rank (million dwt)	Per cent flagged out
Greece	1 (149.9)	70.1	19.5	1 (81.0)	56.5
Japan	2 (104.4)	87.1	13.6	2 (80.3)	56.1
Norway	3 (58.1)	53.3	7.6	4 (55.0)	33.2
China	4 (44.3)	48.8	5.8	8 (25.1)	19.9
United States	5 (42.5)	74.1	5.5	3 (55.1)	66.4
Germany	6 (40.7)	82.2	5.3	10 (12.7)	62.7
Hong Kong, China	7 (37.7)	65.0	4.9	5 (29.8)	88.8
Republic of Korea	8 (25.8)	64.6	3.4	9 (15.7)	27.0
Taiwan Province of China	9 (22.3)	71.7	2.9	14 (10.5)	36.1
Singapore	10 (19.4)	34.9	2.5	17 (7.5)	38.1
United Kingdom	11 (18.1)	56.5	2.4	7 (25.6)	68.9
Denmark	12 (16.5)	48.3	2.2	12 (11.5)	40.4
Russian Federation[b]	13 (16.2)	48.1	2.1	6 (29.3)	2.5
Italy	14 (12.2)	31.9	1.6	11 (11.7)	6.8
Saudi Arabia	15 (11.0)	91.6	1.4	..	..
India	16 (10.5)	10.8	1.4	13 (10.8)	4.1
Turkey	17 (8.9)	18.9	1.2	18 (6.6)	10.7
Netherlands	18 (7.2)	43.8	0.9	24 (5.5)	41.1
Iran, Islamic Republic of	19 (7.1)	3.2	0.9	16 (8.6)	0.3
Switzerland	20 (7.0)	90.1	0.9	28 (4.0)	88.4
Sweden	21 (6.9)	79.3	0.9	23 (5.5)	51.3
Malaysia	22 (6.6)	12.1	0.9	..	..
Brazil	23 (6.5)	31.4	0.9	15 (9.9)	3.6
Belgium	24 (6.2)	97.3	0.8	22 (5.7)	56.7
France	25 (6.0)	50.6	0.8	20 (6.1)	50.3
Canada	26 (5.9)	56.0	0.8	35 (2.4)	76.9
Philippines	27 (4.8)	15.5	0.6	29 (3.5)	5.4
Indonesia	28 (4.3)	25.3	0.6	34 (2.4)	35.1
Spain	29 (4.2)	96.6	0.6	25 (5.1)	4.8
Kuwait	30 (3.3)	0.0	0.4	26 (4.6)	38.6
Monaco	31 (3.1)	100.0	0.4	..	..
Australia	32 (2.8)	49.7	0.4	31 (2.9)	6.5
Cyprus	33 (2.7)	70.5	0.4	19 (6.1)	16.4
Croatia[c]	34 (2.3)	54.2	0.3	..	..
Chile	35 (2.2)	61.3	0.3	..	..
Yugoslavia	..	..	..	21 (6.0)	4.5
Poland	..	..	..	27 (4.2)	0.0
Finland	..	..	..	30 (3.4)	72.9
Argentina	..	..	..	32 (2.7)	10.2
Pakistan	..	..	..	33 (2.5)	80.1

[a] Ships over 1,000 grt.
[b] USSR in 1990.
[c] Under Yugoslavia in 1990.

F. Organization for Economic Cooperation and Development

(Prepared by the OECD secretariat)

182. The Maritime Transport Committee (MTC) of OECD has over the past several years produced several substantive reports relating to the problem of sub-standard shipping. The reports are summarized below. In addition, based on this body of work, member countries of the OECD MTC have approved two policy-related documents relating to the fight against sub-standard shipping: the Policy Statement on Substandard Shipping (2002) and the *Action Plan to Combat Substandard Shipping* (2000). These documents are reproduced in their entirety in subsections 2 and 3 below.

1. Recent Maritime Transport Committee reports on sub-standard shipping

2003

(a) Incentives for Quality Shipowners

183. The MTC identified the provision of incentives as one possible strategy to encourage quality shipowners to comply with international regulations and included this item in its Policy Statement on Substandard Shipping (see subsection 3 below). This paper investigates the concept of incentives for quality shipowners (but also other industry parties where relevant) to encourage them to maintain their standards and to enable them to better combat non-market competition from operators and users of sub-standard shipping.

184. Among the paper's findings are the following:

- Incentives are not intended to be subsidies. Therefore, by definition any incentives must be clearly and closely linked to sub-standard shipping and must have the effect of directly increasing the burdens and costs of sub-standard ship operators and users vis-à-vis those that are behaving responsibly.
- The economic benefits of any incentive must be accessible to quality ships only and should put sub-standard operators at a disadvantage. That quality must be measurable in an objective and transparent way, and that information must be readily available to every party involved.
- Ideally incentives should have a global, or at a minimum a regional, reach and this would certainly apply to such items as reduced insurance premiums. Others, such as differential harbour dues based on safety and environmental performance, may start at the local level and be subsequently extended to the regional or global level if considered successful.
- Other incentives can provide practical benefits for ships that demonstrate consistent compliance with international regulations, for example, a reduction in the number and perhaps intensity of port State control inspections on ships that have a good port State control record. All of these incentives can encourage owners and flag States to continue to improve quality.
- Certain incentives may provide benefits that are not easily measured (such as pride of certification, favourable images with insurers) but may be valuable nonetheless.

185. The paper also addresses disincentives, noting that a disincentive to sub-standard shipowners would be the equivalent of an incentive for those who are responsible. For example, if shipowners who were required to eliminate serious defects following statutory port checks also had to pay fees for a subsequent inspection and/or be subject to higher insurance premiums, the effect would be the same as giving a direct incentive to a good shipowner. In this case, the response of the affected shipowner might be to try to avoid that disincentive, or surcharge, by taking appropriate measures to conform to the safety and environmental regulations.

186. Based on these findings, the paper presents an outline of a possible incentive/disincentive scheme.

Report on Ownership and Control of Ships[68]

187. As part of the MTC work programme on maritime security, this paper examines how the beneficial (or ultimate) ownership and control of vessels can be cloaked by owners who for one reason or another wish to remain anonymous. It examines this issue by reference not only to specific ship registration procedures that exist in flag States, but also by examining more general corporate instruments that provide the principal means of effectively cloaking beneficial ownership.

188. The following are the report's key findings:

- It is very easy, and comparatively inexpensive, to establish a complex web of corporate entities to provide very effective cover to the identities of beneficial owners who do not want to be known.
- While some ship registers actively facilitate and promote anonymity for reluctant owners, the principal mechanisms are not the registers themselves, but the corporate mechanisms that are available to owners to cloak their identity.
- These corporate mechanisms are freely available in many jurisdictions, they are quite legal, and will provide a properly incorporated international business corporation that can transact business almost anywhere in the world (but generally not in the country of incorporation).
- From the perspective of the ship-registering process, the most important single feature that facilitates anonymity of individuals is the ability (quite sensible from a commercial perspective) of corporations to be registered as owners of vessels.
- The most common and effective mechanisms that can provide anonymity for beneficial owners include bearer shares, nominee shareholders, nominee directors, the use of intermediaries to act on owners' behalf and the failure of jurisdictions to provide for effective reporting requirements.
- The most common institutional devices used to create corporations are private limited companies, and international business corporations (IBCs). Other devices such as trusts, foundations and partnerships may also be used.

- Open registers, which by definition do not have any nationality requirements, are the easiest jurisdictions in which to register vessels that are covered by complex legal and corporate arrangements. The arrangements will almost certainly cover a number of international jurisdictions which would be much more difficult to untangle.
- While open registers would be (by choice) the most obvious targets for beneficial owners wishing to avoid revealing their identities, traditional registers, including those of OECD, may not be immune to use by anonymous beneficial owners. The additional complexity and risk of registering vessels in traditional registers would be compensated by the status and perhaps lesser attention directed towards vessels registered in these traditional registers.
- Some institutional arrangements, such as the remaining dependencies of former colonial Administrations (United Kingdom, France and the Netherlands, for example), as well as internal free trade arrangements (such as the European Union) may also provide opportunities, albeit complex and perhaps risky ones, for beneficial owners seeking anonymity to achieve their objectives.

(c) Cost Savings from Non-Compliance with International Environmental Regulations in the Maritime Sector[69]

189. This report examines the unfair commercial advantage afforded to sub-standard shipowners who fail to comply with international environmental regulations that apply to their ships. It builds on previous work undertaken by MTC on the cost savings unscrupulous shipowners and operators could realize by operating sub-standard ships.

190. Six major points stand out from the report's analysis:

- The first is that the "first order" costs of compliance on "average" ships are not that great. These costs include the capital, maintenance and repair costs for environmental equipment. They also include the costs for disposing of residual wastes not treated by on-board systems. Given average operating costs, these amounts can account for anywhere from 3.5 per cent to 6.5 per cent of the ship's operating costs. However, when margins are tight (e.g., when revenues are below the costs of financing and operating the ship), some owners and operators might be tempted to avoid these costs, especially as non-compliance with environmental regulations does not directly endanger ship, crew or cargo.
- Avoiding the first-order costs outlined above often results in equipment failure, meaning that no wastes can be treated on board. These wastes build up and, according to international regulations, must be discharged in port. While the costs for discharging these wastes vary, it remains an expensive option that many sub-standard operators might choose to forgo. Their savings are directly proportional to the wastes they produce (and dump illegally overboard).
- Generally, as ships age, their environmental compliance costs increase. These costs are exacerbated in a non-remunerative market.

- Penalties for non-compliance are effective if the risk of apprehension *and* prosecution for offenders is high and the level of the fine sufficiently elevated to make environmental compliance a more economical solution. The former relies on effective ocean surveillance, port State inspections and judicial processes, whereas the latter depends on the effective level of fines levied. A deterrent fine should at a very minimum be equal to the costs avoided through non-compliance. Despite recent increases in the level of penalties, it is not yet clear that the average fine levied on merchant ships for breaches of MARPOL conform to this definition.
- The advent of several necessary international instruments will most likely have an impact on the environment-related costs of shipping. This paper projects that these new costs will be anywhere from 1.5 to 3 orders of magnitude greater than current environmental compliance costs for average vessels. This highlights the need to be especially vigilant of sub-standard practices as the non-complying operator will be able to derive an even greater commercial advantage over the quality shipowner of the future.
- Heavy fuel oil sludges are the greatest source of illegal oil discharges from ships. As long as ships' engines run on these extremely "dirty" final products of the refining chain, ships will accumulate sludges that, according to international regulations, can only be disposed of in port reception facilities and/or burned in approved incinerators. Weaning the maritime sector from these fuels and towards cleaner sources of energy, much as what has been done for land transport, would go a long way towards reducing sludge production, oil discharges and, ultimately, the competitive advantage accruing to non-compliant vessels.

(d) Availability and Training of Seafarers[70]

191. Given that one of the primary causes of accidents at sea (including those that lead to pollution) is human error, the proper training of ships' crews is an essential element in assuring safe shipping. This report examines the impact of future developments in ship design and construction, technology and management and operational practice on the demand for ships' crews, both in terms of numbers and skill levels. The study also examines the effect that a shortage of OECD seafarers would have on the operation of national fleets and associated shore-based positions.

192. The study highlights that:

- There is a perception among most sectors of the industry that training of seafarers is inappropriate for present needs, let alone those of the future.
- There is still a high demand today for seafarers to have basic practical skills. In general, these are reported as absent, and not provided by colleges; in effect, there is too great an emphasis on theoretical knowledge.
- There appears to be a lack of cooperation and communication between training establishments and the wider shipping industry to identify new technologies, commercial problems, etc.

- Insufficient training is given in knowledge related to new equipment and technology. Vessels today are increasingly sophisticated but seafarers have limited technical understanding.
- Owners/operators and shore-based employers currently report a lack of management and IT skills among serving and ex-serving officers.

2001

(e) Report on Regulatory Issues in International Maritime Transport

193. This report focuses broadly on regulations governing international liner and bulk shipping, including UNCLOS, SOLAS and, to a lesser extent, MARPOL. The report discusses the web of rules and laws pertaining to these two segments of the shipping industry shipping, with an emphasis on regulations impacting commercial performance. As well as reviewing administrative regulations to judge whether they meet their intended objectives efficiently and effectively, the report examines all those aspects of economic regulations that restrict entry, exit, pricing and normal commercial practices, including different forms of business organization.

194. Many measures that apply to maritime transport services are not part of a regulatory framework, but constitute commercial practices of market operators. Both formal regulations and commercial practices (it being difficult to draw a clear distinction between them at times) have existed in the liner and bulk shipping sector for a long time, and have had a considerable impact on the development of these segments of the shipping industry.

195. The report recognizes that, in spite of a multitude of regulations and practices, the liner and bulk shipping sectors appear to be less regulated than many other service sectors, particularly other transport sectors. However, there is still scope for improvement in regulatory frameworks to improve economic efficiency to serve broad public interests, and desirable reform areas are pointed out in the report.

(f) Report on Ship Scrapping[71]

196. This report examines the correlation between vessel losses and their age, current ship scrapping and recycling practices and the implications of accelerated scrapping of older vessels.

197. The report establishes that there is a clear correlation between the age of vessels and losses at sea, and that a reduction in the numbers of those vessels would result in safer vessels and cleaner seas. However, an accelerated scrapping programme for certain ship categories could have serious implications for trade and shipbuilding.

198. The report also notes that most ship scrapping is concentrated in developing countries and that the industry has a poor safety record, causes pollution and generally affords its workers few basic rights.

(g) Cost to Users of Substandard Shipping[72]

199. This study seeks to identify and measure the direct costs incurred by the users of sub-standard ships. In particular, the report aims to establish whether there are costs directly borne by the users of sub-standard shipping or whether there are ways such costs can be made to trickle down to the industry generally and beyond, so that those directly responsible for the use of sub-standard shipping rarely incur actual losses from their actions.

200. The report finds that the majority of parties that are directly involved in the use of sub-standard shipping do not apparently incur significant costs that they need to bear themselves. The insurance industry provides coverage for most prospective liabilities. While wilful negligence or recklessness can invalidate insurance coverage, proving this can be difficult in practice.

201. Other important conclusions in the report are:

- The responsibility for eliminating defective ships has been placed almost entirely on vessel owners, flag States and classification societies. This has left other parties in the industry free of any effective liabilities that could encourage them to promote quality shipping at the expense of tonnage that fails to meet the requirements of legislation.
- Tanker owners in particular are protected against the consequences of large oil spills by the levels set by the Civil Liability Convention.
- There is a strong incentive for charterers and cargo owners to see the continued existence of low-quality ships as these facilitate the inexpensive movement of cargoes.
- The failure by some classification societies to enforce regulatory requirements has exacerbated the problem of sub-standard shipping, and their certifications have assisted shipowners in obtaining finance and insurance coverage for their vessels.
- Provided the role of banks is restricted to that of a passive lender, they are not liable for incidents involving vessels they finance.
- P&I Clubs and marine underwriters bear many of the costs of incidents associated with low-quality ships. Depressed insurance markets have made the insurance industry less selective of those whom they insure.
- There is a lack of transparency, and information is still relatively difficult to obtain.

202. Given the above findings, the report also leads to the conclusion that industry self-regulation is likely to be largely ineffective given the lack of a proper incentive structure.

1998

(h) Discussion Paper on Possible Actions to Combat Sub-standard Shipping by Involving Players Other than the Shipowner in the Shipping Market[73]

203. This paper first discusses a number of related issues to be borne in mind when considering the need to involve industry players other than shipowners in the fight against sub-standard practices. Briefly, the paper examines:

(a) Whether more regulation is likely to lead irresponsible operators to improve their standards;

(b) The recognition that a gap exists between the perceptions held by OECD Governments and some industry players of the commercial risks of sub-standard operations, and how to motivate sections of the industry to acknowledge that transparency of information can never be a substitute for a bias in favour of quality tonnage;

(c) Acknowledgement that sub-standard shipping cannot be dealt with simply through an all-encompassing review of legal liability.

204. The remainder of the paper addresses the potential roles of parties other than the shipowner in combating sub-standard shipping. It focuses in particular on financial institutions, insurance interests, classification societies and users of shipping services. It makes a number of suggestions on initiatives for further examination as to how these players might make a greater contribution to reinforce the importance of quality shipping, and thus drive sub-standard ships further towards the margins of the industry.

1996

(i) Report on the Competitive Advantages Obtained by Some Shipowners as a Result of Non-observance of Applicable International Rules and Standards[74]

205. This report assesses the competitive cost advantages which can be enjoyed by those owners who do not observe the fundamental maritime rules and standards relating to shipboard safety and environmental protection. It also examines the respective roles of the flag State and port State authorities, classification societies, chartering and marine insurance interests and the maritime labour unions in ensuring and monitoring international rules and standards, and identifies and discusses some of the possible solutions to the continuing problem of shipowner non-observance.

206. The principal findings of the report are:

- Shipowners are largely free to determine the operating standards of their vessels. Increasing financial pressures exerted on shipowners in recent years, due to cost inflation and overtonnaging in many sectors, have forced increasing numbers of shipowners onto a survival footing characterized by cost-saving initiatives and expenditure cut-backs on safety-related maintenance items, with the risk of violating international rules and standards.
- The freedom to determine operating standards exists because, in spite of more frequent and more rigorous ship inspections in recent years, there is considerable scope for shipowners to deliberately avoid compliance with

international rules and standards governing safety and pollution prevention in the shipping industry.

- In order to enjoy certain financial benefits, shipowners deliberately choose not to comply with the various safety and pollution measures laid down in international maritime rules and standards in two main ways: by undermaintaining vessels and equipment and by delaying necessary maintenance as long as possible.
- As the pressure on shipowners to reduce repair and maintenance expenditure has increased, so has the responsibility of the flag States, and classification societies acting on their behalf, to identify instances of sub-standard operation which pose a serious risk to safety and the environment. However, flag State administrations are frequently not in a position to fulfil their responsibilities in implementing international rules and standards either directly or indirectly through classification societies. No attempt has yet been made to standardize the way in which flag State inspections should be conducted, although the examination of different ship registers reveals similarities in their approaches.
- The findings of vessel inspections as conducted by various primary (flag States and classification societies acting on their behalf) and secondary (port States, charterers, insurers, maritime unions) bodies demonstrate, however, that there is still considerable room for improvement in terms of both the technical condition of vessels and ship-operating practice.
- Given the present legal framework, penalties applied to sub-standard vessels are, if they exist at all, relatively low compared to the advantages obtained from non-observance of international rules and standards.
- Lasting solutions for combating non-observance of agreed international rules and standards necessitate the coordinated cooperation of all participants in international shipping operations. The industry has an important policing role to play in coordination with flag States and classification societies acting on their behalf. Effectiveness is dependent on good cooperation among the various participants in maritime transport, including the harmonization of how inspections are conducted and, just as important, how corrective actions are followed up.
- Significant improvements in vessel operating standards cannot, however, be achieved through more diligent policing alone: shipowners and operators need to commit greater resources to preventing problems, especially through the effective implementation of the ISM Code. While the ISM Code will have a beneficial effect overall, it will not totally eradicate sub-standard practices as it does not address the root of the industry's problem, namely the lack of qualified, experienced and motivated seafarers.
- For the foreseeable future, the shipping industry will be characterized by a two-tier market in ship-operating standards. The upper tier comprises those owners who take a responsible attitude to safe ship operations and as a result enjoy access to most charterers and trade routes. The lower tier, by contrast, is made up of owners and operators who continue to circumvent or ignore accepted rules and regulations and who will be increasingly targeted in the future to undergo shipboard and office inspections and will be afforded limited access to certain trades and charterers.

1993

(j) Examination of Eventual Competitive Advantages of Vessels Registered under Second Registers Available in Certain OECD Member Countries

207. This report examines the various motivations for OECD shipowners to "flag out" from OECD registers and evaluates some of the competitive advantages accruing to the latter due to such a decision. The report finds that data are lacking to conclusively determine whether a competitive advantage is obtained by open-register shipowners. This finding served as a starting point for the two reports cited above dealing with the competitive advantages obtained by sub-standard shipowners due to non-compliance with safety and environmental regulations. The report also provides an analysis of the flagging-out process and the shipowner decision cycle.

2. Action Plan to Combat Sub-standard Shipping (1998)

The Action Plan, which provides for a series of industry based initiatives, is based on the outcome of a round table held in Paris on 30 September 1998 which was attended by senior representatives of major maritime-related industry groups, as well as government officials.

Industry participants at the round table gave strong support to the direct involvement of the maritime industry and endorsed the concept of greater industry self-regulation to avoid further domestic and international regulations to address this difficult problem.

For their part OECD Governments (and, through the MTC outreach programme, non-OECD Governments as well) will be encouraged to release the results of their port State control inspections, as well as their self-assessments of flag State performance through the International Maritime Organization when these became available.

The Action Plan also has the strong support of IMO, which welcomed the OECD initiative as a timely focus on the principle of the safety culture and a renewed emphasis on the effective implementation of existing international safety regulations.

Objective

The objective of the Action Plan is to encourage the adoption by industry of various initiatives to combat the incidence of sub-standard shipping, while acknowledging the leading role of the International Maritime Organization in respect of all technical questions related to safety and the protection of the maritime environment. The implementation of these initiatives should not involve any additional national or international regulations.

The initiatives

Role of the P&I Clubs

- Work through national administrations to consider further whether the possession of P&I membership might be accepted as constituting evidence of appropriate third-party coverage

- Support and encourage the decision of P&I Clubs that no vessel would be entered without ISM certification, as well as their future consideration of the proposal that ISM certification would be made a condition of coverage at the next renewal of vessels' coverage. It is anticipated that these initiatives would be uniformly applied among all clubs in the international groups.

Shipper inspection schemes

- Discuss with the managers of existing shipper inspection schemes the scope for further integration and development of those schemes.
- Encourage greater dialogue between the shipper scheme administrators, other organizations that generate similar information (such as the International Association of Classification Societies (IACS)) and national administrations in order to improve and facilitate the flow of information.
- While acknowledging that because of its generally fragmented nature there is no single international body representing dry bulk shippers, bring together those dry bulk shippers that have in-house vetting arrangements, as well as potential new participants, to consider integrating those arrangements in order to provide a more extensive and effective coverage of their sector.

Activities involving shipbrokers

- Discuss with shipbrokers how to enhance their role in avoiding the chartering of sub-standard vessels, including the possible introduction of a widespread code of best practice among shipbrokers.
- Investigate how to enhance access to relevant, easily accessible and up-to-date information, especially from port State control inspections, to assist shipbrokers in action to combat sub-standard shipping.

Activities by ship financiers

- Discuss with ship financiers the specific issue of the retention and use of their rights to access relevant information on ships financed by them, especially from classification societies, insurers and port State control authorities.

Transparency of information

- Because of the prominence and importance given to the transparency of information and the fact that it involves all industry participants, the MTC will examine in 1999 specific ways in which relevant, up-to-date information, in compatible formats, can be made more accessible to all parties through:
  - Giving specific recognition to the fact that some information will have proprietary value and may therefore require special measures to facilitate access; and
  - In the interim, the Maritime Transport Committee establishing an Internet page on its web site, dedicated to sub-standard shipping, which will include links to bodies (such as IACS and port State control authorities) that provide relevant, publicly available information on sub-standard shipping.

- Discuss with Governments and industry representatives the issue of legal liability, which may be created by the reasonable dissemination and use of information regarding sub-standard ships
- Discuss with OECD member countries (as well as with non-member countries through the MTC outreach programme) the prompt release of the results of their port State control inspections, as well as their self-assessments of flag State performance, the latter through IMO

Policy coordination among government bodies

- While this issue was not specifically discussed at the industry round table because of the incidence of at least two possible conflicts between competition policy requirements and activities which might potentially enhance maritime safety (involving marine insurance and P&I Clubs), the MTC will discuss with OECD member Governments possible ways of avoiding the unintentional hindrance of potential safety-related measures through possible conflict with other policies.

3. Policy Statement on Sub-standard Shipping by the Maritime Transport Committee of OECD (2002)

Preamble

The Maritime Transport Committee considers that sub-standard ships[75] carry with them a higher than normal risk of being involved in serious incidents, which impose large costs on communities, including loss of life and environmental damage. This is a situation which should not be tolerated by Governments, shipowners, shippers and the maritime industry generally.

While the MTC recognizes that the International Maritime Organization has prime competence for the regulation of shipping engaged in international trade in the areas of maritime safety, efficiency of navigation and the prevention and control of marine pollution from the point of view of the ship, there is much that can be done by Governments, international organizations and other players in the maritime industry to minimize the incidence of sub-standard shipping. This is a collective responsibility that requires efforts on everyone's part.

The Maritime Transport Committee therefore urges all flag and port States, shipowners, ship operators, shipping companies, shippers and other parties involved in the maritime sector to act effectively and conscientiously in their approach to sub-standard shipping, so that the ability of unscrupulous operators to offer sub-standard ships, and the opportunity for unscrupulous or gullible charterers and shippers to accept them, is severely limited or removed completely.

To further this objective, the Maritime Transport Committee and its member States have endorsed this Policy Statement to demonstrate the importance attached to the campaign to eliminate sub-standard shipping, and to highlight the actions that will be taken by the Committee and its member States in pursuance of that objective.

The MTC also invites all non-OECD States that share this concern to associate themselves with this Statement, in order to highlight to the operators and users of sub-standard ships the weight of international opinion that is ranged against them.

With this background firmly in mind, the Maritime Transport Committee and its member States endorse the following actions as reflecting their policy stance with respect to sub-standard shipping.

Flag States

- Flag States have the principal responsibility for identifying and dealing with sub-standard ships, and must take effective action to ensure that such ships cannot operate as long as they fail to meet international maritime conventions. Flag States should not accept new vessels on their registers without ensuring that they meet all international requirements.
- The Committee notes the large number of international maritime conventions that if effectively implemented would deal with the problem of sub-standard shipping. However, the Committee also notes with great concern that there is clear evidence that these conventions are often applied ineffectually, or inconsistently, and therefore urges all flag States to ensure that these conventions are effectively implemented in their jurisdictions.
- MTC members support IMO efforts to strengthen the implementation of international rules and standards, including action by IMO to review flag State performance.
- MTC members also support proposals to examine the extension of the charter of the IMO to give it the ability to actively review the performance of flag States, as well as the means of enforcing mandatory requirements.

Port States

- Port States can be effective in identifying sub-standard ships, and they are encouraged to communicate with the flag States concerned and freely exchange all available information among themselves. Port States should also ensure that existing internationally accepted rules and standards are rigorously and uniformly applied within their jurisdictions. For their part, MTC members will work actively through other forums, such as the various Port State control Memoranda of Understanding and regional Agreements, to encourage the widespread development of a safety culture and environmental conscience in as many jurisdictions as possible.
- Without discriminating in form or fact against vessels of any State, port States should apply sanctions (including detentions) and penalties that are adequate to discourage operators and users of sub-standard ships.

Classification societies

- Classification societies play an extremely important role in the process, and must perform their tasks effectively and with great diligence. Classification societies should ensure that their own standards are maintained. This applies especially to those under the IACS umbrella which could provide the standard against which other societies could be measured. MTC members encourage all classification societies to achieve a cohesive and uniform approach to ship inspections.

- If incident and detention statistics indicate that some classification societies are unable to ensure appropriately high standards, MTC members will consider establishing, maintaining and publicizing a list of those societies that are not applying adequate standards.
- MTC member countries will also consider the possibility of promoting an international licensing system, perhaps operated by IMO, aimed at ensuring that classification societies meet acceptable standards of performance.

Marine insurance

- The insurance industry provides a crucial financial safety net for commercial enterprises. At the same time (and probably as an unintended consequence) it also provides very effective coverage for sub-standard ships by allowing their risk to be spread over many players in the transportation chain, and ultimately to consumers. The insurance industry should therefore identify and target providers and users of sub-standard ships and should consider refraining from providing insurance coverage unless the deficiencies which make these ships unsafe are eliminated.
- In support of the above measure, MTC members, with the assistance of the insurance industry, will undertake a study of the international maritime insurance system to establish whether, without prejudice to potential victims, it is feasible to remove the coverage available to sub-standard shipping, while still maintaining the necessary risk-spreading coverage for the rest of the industry.
- Furthermore, MTC members will actively promote the introduction of compulsory insurance by IMO for all vessels, including provisions preventing insurers from paying fines for shipowners when the latter are prosecuted and found guilty of safety- or pollution-related offences.

Sub-standard crews

- While the MTC accepts that there is a clear place for crews that are low-cost and efficient, sub-standard crews or sub-standard crew conditions should not be tolerated. The MTC therefore strongly supports the strenuous efforts of IMO to enhance the training and qualifications of seafarers, as well as the intent and concepts behind the ILO maritime conventions, and welcomes the recent decision by ILO to revisit its maritime instruments in order to improve their relevance and encourage their wider ratification.

Incentives and rewards

- Incentive and reward programmes can be effective tools to help combat sub-standard shipping. It is noted by the MTC that some programmes currently exist and others are being developed. MTC members strongly endorse the acceleration and expansion of efforts to reward responsible shipowners and other industry parties through incentives and other recognition programmes aimed at maintaining high standards and to assist regulators in combating sub-standard ships. These programmes could encompass, for example, reduced classification fees, lower insurance premiums, fewer and less time-consuming port State inspections and, where this is possible, lower port charges.

- MTC members will work with industry to develop the concept of incentives for responsible shipowners and other parties in the industry, in order to encourage them to attain appropriate standards and to be able to better combat the non-market competition posed by operators and users of sub-standard shipping.

Information and publicity

- Good, as well as bad, publicity can be an important tool in combating sub-standard shipping. MTC members recognize the many efforts already under way, such as white lists, blacklists and detention lists, regularly and readily available over the Internet and in publications. MTC members will examine whether this information lends itself to further consolidation and release on the Committee's sub-standard shipping web site. MTC members will cooperate positively to use the Equasis information system and expand its content.
- Industry should help to avoid the development of unnecessary or excessive regulation; instead every effort should be made to facilitate the effective enforcement of existing regulations, for example through the free exchange of information and facilitating the identification of sub-standard ships and their operators and users.
- Also, the MTC urges all of its members to ensure that their maritime administrations freely and frequently make information on sub-standard shipping publicly available, inter alia, through Equasis.
- While the Committee recognizes that there may be some legal problems associated with identifying and publicizing those involved in the operation, use of or other involvement in sub-standard ships, this should not prevent the increasing use of such a powerful deterrent. MTC members will join with all other interested parties to address problems that may arise through the reasonable dissemination and use of such information, in good faith and in the public interest.

Legal matters

- MTC members will work actively, including through IMO, to consider some international means of facilitating proof of negligence not only for shipowners, but also for charterers, cargo interests, classification societies and others, where they have wilfully taken advantage of the existence of sub-standard shipping.

Conclusion

This Policy Statement represents a strong demonstration of the determination of the Maritime Transport Committee and its member States to ensure that continued high priority is given to the elimination of sub-standard shipping. This remains an issue of great concern and potentially of great cost, and pressure on those who would operate or use such ships must not be eased in any way.

The Policy Statement also highlights the strong view held by the MTC that if this problem is to be resolved, industry itself must play a major role in this effort. However, if this is going to succeed, responsible shipowners and users must be given every incentive to ensure that they will not be disadvantaged by acting responsibly. In other words, irresponsible operators and users must be detected and held accountable, and must not be permitted by the international system to profit unfairly from their actions. Those who operate or use sub-standard ships in contravention of internationally accepted rules and standards should face strong disincentives and penalties, and these should not be permitted to be simply added to the list of risks against which the perpetrators can already insure.

The MTC also considers that its 1998 Action Plan to Combat Sub-standard Shipping, adopted as a result of a round-table meeting with industry, can still make a considerable contribution, as it aims to strengthen industry involvement and attempts to promote effective exchanges of information between various industry players. Therefore, the Action Plan will continue to be implemented in support of this Policy Statement, but will now be treated as a longer-term activity, aimed at gradually strengthening action against sub-standard shipping.

Action by the MTC

A number of the actions mentioned above (for example, activities at IMO) can only be undertaken by MTC member Governments. However, consistent with the points contained in this Policy Statement, the Committee will itself:

- Work with industry to develop the concept of incentives for responsible shipowners and other parties in the industry, in order to encourage them to attain appropriate standards and to be able to better combat the non-market competition of operators and users of sub-standard shipping
- Consult with IMO on what economic, legal, policy and political avenues could be explored by MTC to support the activities of IMO itself to enhance compliance with existing international marine conventions, and help it to pursue new activities such as compulsory insurance
- With the assistance of industry, the MTC will agree on a mandate to undertake a study of the international maritime insurance system to establish whether scope exists to remove the coverage available to sub-standard shipping, while still maintaining the necessary risk-spreading coverage for the rest of the industry
- Examine whether existing information on sub-standard shipping from various sources lends itself to further consolidation and release on the Committee's sub-standard shipping web site, in order to expose operators and users of sub-standard shipping or promote responsible shipowners and other industry parties
- Continue with the implementation of those aspects of the 1998 Action Plan to Combat Sub-standard Shipping that are of interest to the various industry players, and which provide an incentive to sustain high-quality participation in shipping. These aspects are likely to involve enhancing the availability of information, and perhaps the construction of various detailed codes of best practice, aimed primarily at setting a benchmark against which individual enterprises can be measured. This may facilitate the identification of those who do not meet minimum acceptable standards.

III. Tables of flag State obligations

(Prepared by the United Nations Division for Ocean Affairs and the Law of the Sea)

Note on tables

208. Tables A and B provide information on flag State obligations contained in the United Nations Convention on the Law of the Sea and the United Nations Fish Stocks Agreement in the order in which they appear in these agreements. Table A lists the obligations of the flag State in UNCLOS in relation to navigation; conservation and management of marine living resources; the protection and preservation of the marine environment and conduct of marine scientific research; and monitoring, control and surveillance of fishing vessels on the high seas. Table B lists flag State responsibilities in relation to the conservation and management of straddling fish stocks and highly migratory fish stocks as they are embodied in the United Nations Fish Stocks Agreement.

209. Table C lists obligations of flag States organized by subject matter in a large number of international instruments, including UNCLOS. Where the entire instrument is relevant, only the title is given. Where there is a specific provision setting out a flag State obligation, the number of the article is given and the obligation indicated. For obligations in UNCLOS, only the article number is provided as the substance of the obligation is summarized in table A. Table C is not intended to be an exhaustive list. (The chosen order does not imply any priority among the cited instruments.)

Table A

United Nations Convention on the Law of the Sea (UNCLOS)

Part II
Territorial sea and contiguous zone

Section 3
Innocent passage in the territorial sea

Provision of UNCLOS	*Obligations of the flag State*
Article 18(2)	**Meaning of passage** Obligation of the flag State to require ships exercising the right of innocent passage in the territorial sea of the coastal State to proceed in a continuous and expeditious manner.
Article 19(1)	**Meaning of innocent passage** Obligation of the flag State to ensure that ships flying its flag exercise the right of innocent passage in conformity with the Convention and with other rules of international law.

Provision of UNCLOS	*Obligations of the flag State*
Article 20	**Submarine and other underwater vehicles** Obligation of the flag State to require submarines and other underwater vehicles exercising the right of innocent passage to navigate on the surface and to show their flag.
Article 21(4)	**Laws and regulations of the coastal State relating to innocent passage** Obligation of the flag State to require ships exercising the right of innocent passage through the territorial sea to comply with all laws and regulations of the coastal State relating to innocent passage and all generally accepted international regulations relating to the prevention of collisions at sea.
Article 22(2)	**Sea lanes and traffic separation schemes in the territorial sea** Obligation of the flag State to require tankers, nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances or materials, when exercising the right of innocent passage through the territorial sea, to confine their passage to designated or prescribed sea lanes and traffic separation schemes when required to do so by the coastal State.
Article 23	**Foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances** Obligation of the flag State to require nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances through the territorial sea in innocent passage to carry documents and observe special precautionary measures established for such ships by international agreements.

Part III
Straits used for international navigation

Section 2
Transit passage

Provision of UNCLOS	*Obligations of the flag State*
Article 39(1)	**Duties of ships and aircraft during transit passage** Obligation of the flag State to require ships and aircraft, while exercising the right of transit passage: (a) To proceed without delay through or over the strait; refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering the strait, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations; refrain from any activities other than those incidental to their normal modes of continuous and expeditious transit unless rendered necessary by force majeure or by distress; (b) To comply with other relevant provisions of Part III of UNCLOS governing straits used for international navigation.

Provision of UNCLOS	*Obligations of the flag State*
Article 39(2)	**Obligation of the flag State to require ships exercising the right of transit passage:** (a) To comply with generally accepted international regulations, procedures and practices for safety at sea, including the International Regulations for Preventing Collisions at Sea; (b) To comply with generally accepted international regulations, procedures and practices for the prevention, reduction and control of pollution from ships.
Article 40	**Research and survey activities** Obligation of the flag State to forbid ships, including marine scientific research and hydrographic survey ships, from carrying out any research or survey activities during transit passage without the prior authorization of the States bordering straits.
Article 41(7)	**Sea lanes and traffic separation schemes in straits used for international navigation** Obligation of the flag State to require ships in transit passage to respect applicable sea lanes and traffic separation schemes for navigation in straits that may be established by States bordering straits where they are necessary to promote the safe passage of ships.
Article 42(4)	**Laws and regulations of States bordering straits relating to transit passage** Obligation of the flag State to require ships exercising the right of transit passage to comply with laws and regulations relating to transit passage through straits that may be adopted by States bordering straits in respect of all or any of the following: (a) The safety of navigation and the regulation of maritime traffic, as provided in article 41; (b) The prevention, reduction and control of pollution, by giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the straits; (c) With respect to fishing vessels, the prevention of fishing, including the stowage of fishing gear; The loading and unloading of any commodity, currency or person in contravention of customs, fiscal, immigration or sanitary laws and regulations of States bordering straits.
Article 42(5)	Obligation of the flag State of a ship entitled to sovereign immunity which acts in a manner contrary to laws and regulations of States bordering straits relating to transit passage or other provisions of Part III of UNCLOS governing straits used for international navigation to bear international responsibility for any loss or damage which results to States bordering straits.
Article 43	**Navigational and safety aids and other improvements and the prevention, reduction and control of pollution** Obligation of user flag States to cooperate by agreement with States bordering a strait: (a) In the establishment and maintenance in a strait of necessary navigational and safety aids or other improvements in aid of international navigation; and (b) For the prevention, reduction and control of pollution from ships.

Part IV
Archipelagic States

Provision of UNCLOS	*Obligations of the flag State*
Article 53(11)	**Right of archipelagic sea lanes passage** Obligation of the flag State to ensure that ships in archipelagic sea lanes passage respect applicable sea lanes and traffic separation schemes established by an archipelagic State in accordance with the provisions of this article.
Article 54	**Duties of ships and aircraft during their passage, research and survey activities, duties of the archipelagic State and laws and regulations of the archipelagic State relating to archipelagic sea lanes passage** Obligations of the flag State set out in articles 39, 40, 42 and 44 apply mutatis mutandis to archipelagic sea lanes passage.

Part V
Exclusive economic zone

Provision of UNCLOS	*Obligations of the flag State*
Article 58(3)	**Rights and duties of other States in the exclusive economic zone** Obligation of the flag State in exercising its rights and performing its duties under the Convention in the exclusive economic zone to have due regard to the rights and duties of the coastal State and to comply with the laws and regulations adopted by the coastal State in accordance with the provisions of the Convention and other rules of international law insofar as they are not incompatible with Part V of UNCLOS.
Article 60(6)	**Artificial islands, installations and structures in the exclusive economic zone** Obligation of the flag State to respect the safety zones established by the coastal State around artificial islands, installations and structures and to comply with generally accepted international standards regarding navigation in the vicinity of artificial islands, installations and structures and safety zones.
Article 61(5)	**Conservation of the living resources** Obligation of the flag State of vessels allowed to fish in the exclusive economic zone to contribute and exchange on a regular basis through competent organizations, whether subregional, regional or global, where appropriate, available scientific information, catch and fishing efforts statistics and other data relevant to the conservation of fish stocks.

Provision of UNCLOS	*Obligations of the flag State*
Article 62(4)	**Utilization of the living resources** Obligation of the flag State to ensure that its vessels fishing in the exclusive economic zone of another State comply with the conservation measures and with other terms and conditions established in the laws and regulations of the coastal State relating, inter alia, to the following: (a) Licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, which, in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry; (b) Determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or groups of stocks or catch per vessel over a period of time or to the catch by nationals of any State during a specified period; (c) Regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used; (d) Fixing the age and size of fish and other species that may be caught; (e) Specifying information required of fishing vessels, including catch and effort statistics and vessel position reports; (f) Requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programmes and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data; (g) The placing of observers or trainees on board such vessels by the coastal State; (h) The landing of all or any of the catch by such vessels in the ports of the coastal State; (i) Terms and conditions relating to joint ventures or other cooperative arrangements; (j) Requirements for the training of personnel and the transfer of fisheries technology, including enhancement of the coastal State's capability of undertaking fisheries research; (k) Enforcement procedures.
Article 63(2)	**Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it** Obligation of the flag State which fishes in the adjacent area for stocks occurring both within the exclusive economic zone and in an area beyond and adjacent to it (straddling fish stocks) to seek, either directly or through appropriate subregional or regional organizations, to agree with the coastal State upon the measures necessary for the conservation of these stocks in the adjacent area.

Provision of UNCLOS	*Obligations of the flag State*
Article 64	**Highly migratory species** Obligation of the flag State whose nationals fish in the region for the highly migratory species listed in Annex I to cooperate directly or through appropriate international organizations with the coastal State with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the flag State that harvests these species in the region shall cooperate with the coastal State to establish such an organization and participate in its work.
Article 65	**Marine mammals** Obligation of States, including flag States, to cooperate with a view to the conservation of marine mammals and, in the case of cetaceans in particular, to work through the appropriate international organizations for their conservation, management and study.
Article 66(3)(a)	**Anadromous stocks** Obligation of the flag State allowed to fish for anadromous stocks beyond the outer limits of the exclusive economic zone to maintain consultations with a view to achieving agreement on the terms and conditions of such fishing, giving due regard to the conservation requirements and the needs of the State of origin in respect of such stocks.

Part VI
Continental shelf

Provision of UNCLOS	*Obligations of the flag State*
Article 79(5)	**Submarine cables and pipelines on the continental shelf** Obligation of the flag State to ensure that its ships laying cables or pipelines have due regard to submarine cables or pipelines already in position, in particular, the obligation not to prejudice the possibilities of repairing existing ones.

Part VII
High seas

Section 1
General provisions

Provision of UNCLOS	*Obligations of the flag State*
Article 87(2)	**Freedom of the high seas** Obligation of the flag State to have due regard for the interests of other States while exercising the freedoms of the high seas and the rights under the Convention with respect to activities in the Area.

Provision of UNCLOS	*Obligations of the flag State*
Article 88	**Reservation of the high seas for peaceful purposes** Obligation of the flag State to reserve the high seas for peaceful purposes.
Article 91(1)	**Nationality of ships** Obligation of the flag State to fix the conditions for the grant of its nationality to ships, for the registration of ships in its territories, for the right to fly its flag and to have a genuine link with ships flying its flag.
Article 91(2)	Obligation of the flag State to issue to ships to which it has granted the right to fly its flag documents to that effect.
Article 94	**Duties of the flag State** 1. Obligation of the flag State to effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag. 2. In particular every State shall: (a) Maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and (b) Assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship. 3. Obligation of the flag State to take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to: (a) The construction, equipment and seaworthiness of ships; (b) The manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments; (c) The use of signals, the maintenance of communications and the prevention of collisions. 4. Such measures shall include those necessary to ensure: (a) That each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as appropriate for the safe navigation of the ship; (b) That each ship is in the charge of a master and officers who possess appropriate qualifications, in particular seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship; (c) That the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.

Provision of UNCLOS	*Obligations of the flag State*
	5. In taking the measures called for in paragraphs 3 and 4, each flag State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance. 6. Obligation of the flag State to investigate the report of a State which has clear grounds to believe that proper jurisdiction and control with respect to a ship flying its flag have not been exercised and, if appropriate, to take any action necessary to remedy the situation. 7. Obligation of the flag State to cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships, installations of another State or to the marine environment. The flag State and the other State shall cooperate in the conduct of any inquiry held by that other State into any such casualty or incident of navigation.
Article 98(1)	**Duty to render assistance** Obligation of the flag State to require the master of a ship flying its flag, insofar as he can do so without serious danger to the ship, the crew or the passengers: (a) To render assistance to any person found at sea in danger of being lost; (b) To proceed with all possible speed to the rescue of a person in distress, if informed of their need of assistance, insofar as such action may reasonably be expected of him; (c) After a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which he will call.
Article 99	**Prohibition of the transport of slaves** Obligation of the flag State to take effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall ipso facto be free.
Article 100	**Duty to cooperate in the repression of piracy** Obligation of the flag State to cooperate with other States to the fullest extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.
Article 108(1)	**Illicit traffic in narcotic drugs or psychotropic substances** Obligation of the flag State to cooperate with other States in the suppression of illicit traffic in narcotic drugs or psychotropic substances engaged in by ships on the high seas contrary to international conventions.
Article 109(1)	**Unauthorized broadcasting from the high seas** Obligation of the flag State to cooperate with other States in the suppression of unauthorized broadcasting from the high seas.

Provision of UNCLOS	*Obligations of the flag State*
Article 113	**Breaking or injury of a submarine cable or pipeline** Obligation of the flag State to adopt laws and regulations necessary to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking and injury of a submarine pipeline or high-voltage power cable, shall be a punishable offence. This provision shall apply also to conduct calculated or likely to result in such breaking or injury. However, it shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

Section 2
Conservation and management of the living resources of the high seas

Provision of UNCLOS	*Obligations of the flag State*
Article 116	**Right to fish on the high seas** Obligation of the flag State whose nationals fish on the high seas to respect: (a) Its treaty obligations; (b) The rights and duties as well as the interests of coastal States provided for, inter alia, in article 63, paragraph 2, and articles 64 to 67; and (c) The provisions of section 2.
Article 117	**Duty of States to adopt with respect to their nationals measures for the conservation of the living resources of the high seas** Obligation of the flag State to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.
Article 118	**Cooperation of States in the conservation and management of living resources** Obligation of flag States to cooperate with each other in the conservation and management of living resources in the areas of the high seas. Flag States whose nationals exploit identical living resources, or different living resources in the same area, shall enter into negotiations with a view to taking the measures necessary for the conservation of the living resources concerned. They shall, as appropriate, cooperate to establish subregional or regional fisheries organizations to this end.

Provision of UNCLOS	*Obligations of the flag State*
Article 119	**Conservation of living resources of the high seas** 1. Obligation of flag States, in determining the allowable catch and establishing other conservation measures for the living resources on the high seas: (a) To take measures which are designed, on the best scientific evidence available to the flag States concerned, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global; (b) To take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened. 2. Obligation of flag States to contribute and exchange available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned. 3. Obligation of flag States concerned to ensure that conservation measures and their implementation do not discriminate in form or in fact against the fishermen of any State.
Article 120	**Marine mammals** Article 65 also applies to the conservation and management of marine mammals in the high seas.

Part XIII
Protection and preservation of the marine environment

Section 1
General provisions

Provision of UNCLOS	*Obligations of the flag State*
Article 192	**General obligation** Obligation of States, including flag States, to protect and preserve the marine environment.
Article 194	**Measures to prevent, reduce and control pollution of the marine environment** 1. Obligation of States, including flag States, to take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and to endeavour to harmonize their policies in this connection.

Provision of UNCLOS	*Obligations of the flag State*
	2. Obligation of States, including flag States, to take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention. 3. The measures taken pursuant to this Part shall deal with all sources of pollution of the marine environment. These measures shall include, inter alia, those designed to minimize to the fullest possible extent: (a) The release of toxic, harmful or noxious substances, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping; (b) Pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels; (c) Pollution from installations and devices used in exploration or exploitation of the natural resources of the seabed and subsoil, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices; (d) Pollution from other installations and devices operating in the marine environment, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices. 4. In taking measures to prevent, reduce or control pollution of the marine environment, States, including flag States, shall refrain from unjustifiable interference with activities carried out by other States in the exercise of their rights and in pursuance of their duties in conformity with this Convention. 5. The measures taken in accordance with this Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.
Article 195	**Duty not to transfer damage or hazards or transform one type of pollution into another** Obligation of States, including flag States, to act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another, in taking measures to prevent, reduce and control pollution of the marine environment.
Article 196(1)	**Use of technologies or introduction of alien or new species** Obligation of States, including flag States, to take all measures necessary to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction or control, or the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant and harmful changes thereto.

Section 2
Global and regional cooperation

Provision of UNCLOS	*Obligations of the flag State*
Article 197	**Cooperation on a global or regional basis** Obligation of States, including flag States, to cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.
Article 198	**Notification of imminent or actual damage** Obligation of a State, including a flag State, to immediately notify other States it deems likely to be affected by such damage, as well as the competent international organizations, when it becomes aware of cases in which the marine environment is in imminent danger of being damaged or has been damaged by pollution.
Article 199	**Contingency plans against pollution** In the cases referred to in article 198, obligation of States, including flag States, in the area affected, in accordance with their capabilities, and the competent international organizations to cooperate, to the extent possible, in eliminating the effects of pollution and preventing or minimizing the damage. To this end, States shall jointly develop and promote contingency plans for responding to pollution incidents in the marine environment.
Article 200	**Studies, research programmes and exchange of information and data** Obligation of States, including flag States, to cooperate, directly or through competent international organizations, for the purpose of promoting studies, undertaking programmes of scientific research and encouraging the exchange of information and data acquired about pollution of the marine environment. They shall endeavour to participate actively in regional and global programmes to acquire knowledge for the assessment of the nature and extent of pollution, exposure to it, and its pathways, risks and remedies.
Article 201	**Scientific criteria for regulations** In the light of the information and data acquired pursuant to article 200, obligation of States, including flag States, to cooperate, directly or through competent international organizations, in establishing appropriate scientific criteria for the formulation and elaboration of rules, standards and recommended practices and procedures for the prevention, reduction and control of pollution of the marine environment.

Section 4
Monitoring and environmental assessment

Provision of UNCLOS	*Obligations of the flag State*
Article 204(2)	**Monitoring risks or effects of pollution** Obligation of States, including flag States, to keep under surveillance the effects of any activities which they permit or in which they engage in order to determine whether those activities are likely to pollute the marine environment.
Article 205	**Publication of reports** Obligation of States, including flag States, to publish reports of the results obtained pursuant to article 204 or provide such reports at appropriate intervals to the competent international organizations, which should make them available to all States.
Article 206	**Assessment of potential effects of activities** Obligation of States, including flag States, as far as practicable, to assess the potential effects of planned activities under their jurisdiction or control on the marine environment and to communicate reports of the results of such assessments in the manner provided in article 205, when they have reasonable grounds for believing that such activities may cause substantial pollution of or significant and harmful changes to the marine environment.

Section 5
International rules and national legislation to prevent, reduce and control pollution of the marine environment

Provision of UNCLOS	*Obligations of the flag State*
Article 209(2)	**Pollution from activities in the Area** Obligation of the flag State to adopt laws and regulations to prevent, reduce and control pollution of the marine environment from activities in the Area undertaken by vessels, installations, structures and other devices flying its flag or of its registry or operating under its authority, as the case may be, subject to the relevant provisions of this section. The requirements of such laws and regulations shall be no less effective than the international rules, regulations and procedures referred to in paragraph 1.[76]
Article 210(5)	**Pollution by dumping** Obligation of the flag State not to carry out dumping within the territorial sea and the exclusive economic zone or onto the continental shelf without the express prior approval of the coastal State, which has the right to permit, regulate and control such dumping after due consideration of the matter with other States which by reason of their geographical situation may be adversely affected thereby.

Provision of UNCLOS	*Obligations of the flag State*
Article 211(1)	**Pollution from vessels** Obligation of States, including flag States, acting through the competent international organization or general diplomatic conference, to establish international rules and standards to prevent, reduce and control pollution of the marine environment from vessels and promote the adoption, in the same manner, wherever appropriate, of routing systems designed to minimize the threat of accidents which might cause pollution of the marine environment, including the coastline, and pollution damage to the related interests of coastal States. Such rules and standards shall, in the same manner, be re-examined from time to time as necessary.
Article 211(2)	**Pollution from vessels** Obligation of the flag State to adopt laws and regulations for the prevention, reduction and control of pollution of the marine environment from vessels flying its flag or of its registry, which shall at least have the same effect as that of generally accepted international rules and standards established through the competent international organization or general diplomatic conference.
Article 211(3)	Obligation of the flag State to require the master of a vessel flying its flag or of its registry, when navigating within the territorial sea of a State participating in cooperative arrangements with other States that establish particular requirements for the prevention, reduction and control of pollution of the marine environment as a condition for the entry of foreign vessels into its ports or internal waters or for a call at its offshore terminals, to furnish, upon request of that State, information as to whether it is proceeding to a State of the same region participating in such cooperative arrangements and, if so, to indicate whether it complies with the port entry requirements of that State.
Article 212(1)	**Pollution from or through the atmosphere** Obligation of the flag State or the State of registry to adopt laws and regulations to prevent, reduce and control pollution of the marine environment from or through the atmosphere, applicable to vessels flying its flag or vessels of its registry or aircraft, taking into account internationally agreed rules, standards and recommended practices and procedures.

Section 6
Enforcement

Provision of UNCLOS	*Obligations of the flag State*
Article 216(1)(b)	**Enforcement with respect to pollution by dumping** Obligation of the flag State to enforce laws and regulations adopted in accordance with this Convention and applicable international rules and standards established through competent international organizations or diplomatic conference for the prevention, reduction and control of pollution of the marine environment by dumping with regard to vessels flying its flag or vessels or aircraft of its registry.

Article 217 **Enforcement by flag States**

Obligation of States to ensure compliance by vessels flying their flag or of their registry with applicable international rules and standards, established through the competent international organization or general diplomatic conference, and with their laws and regulations adopted in accordance with this Convention for the prevention, reduction and control of pollution of the marine environment from vessels and accordingly to adopt laws and regulations and take other measures necessary for their implementation. Flag States shall provide for the effective enforcement of such rules, standards, laws and regulations, irrespective of where a violation occurs.

2. Obligation of States, in particular, to take appropriate measures in order to ensure that vessels flying their flag or of their registry are prohibited from sailing until they can proceed to sea in compliance with the requirements of the international rules and standards referred to in paragraph 1, including requirements in respect of the design, construction, equipment and manning of vessels.

3. Obligation of States to ensure that vessels flying their flag or of their registry carry on board certificates required by and issued pursuant to the international rules and standards referred to in paragraph 1. Obligation of States to ensure that vessels flying their flag are periodically inspected in order to verify that such certificates are in conformity with the actual condition of the vessels. These certificates shall be accepted by other States as evidence of the condition of the vessels and shall be regarded as having the same force as certificates issued by them, unless there are clear grounds for believing that the condition of the vessel does not correspond substantially with the particulars of the certificates.

4. If a vessel commits a violation of the rules and standards established through the competent international organization or general diplomatic conference, the flag State, without prejudice to articles 218, 220 and 228, shall provide for an immediate investigation and where appropriate institute proceedings in respect of the alleged violation irrespective of where the violation occurred or where the pollution caused by such violation occurred or was spotted.

5. Obligation of all States, including flag States, to cooperate with flag States conducting an investigation of a violation by their vessels upon request.

6. Flag States shall, at the written request of any State, investigate any violation alleged to have been committed by vessels flying their flag. If satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, flag States shall without delay institute such proceedings in accordance with their laws.

7. Flag States shall promptly inform the requesting State and the competent international organization of the action taken and its outcome. Such information shall be available to all States.

8. Penalties provided for by the laws and regulations of States for vessels flying their flag shall be adequate in severity to discourage violations wherever they occur.

Provision of UNCLOS	*Obligations of the flag State*
Article 220(4)	**Enforcement by coastal States**
	Obligation of the flag State to adopt laws and regulations and take other measures so that a vessel flying its flag complies with requests for information by the coastal State regarding its identity and port of registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred.
Article 222	**Enforcement with respect to pollution from or through the atmosphere**
	Obligation of the flag State to enforce, with regard to vessels flying its flag or vessels of its registry, its laws and regulations adopted in accordance with article 212, paragraph 1, and with other provisions of this Convention and to adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment from or through the atmosphere, in conformity with all relevant international rules and standards.

Section 7
Safeguards

Provision of UNCLOS	*Obligations of the flag State*
Article 225	**Duty to avoid adverse consequences in the exercise of the powers of enforcement**
	Obligation of the flag State of warships, or other ships clearly marked and identifiable as being on government service and authorized to that effect, not to endanger the safety of navigation or otherwise create any hazard to a vessel, or bring it to an unsafe port or anchorage, or expose the marine environment to an unreasonable risk, when it exercises under the Convention its powers of enforcement against foreign vessels.
Article 228(1)	**Suspension and restrictions on institution of proceedings**
	Obligation of the flag State to make available in due course to the State previously instituting proceedings a full dossier of the case and the records of the proceedings whenever the flag State has requested the suspension of proceedings in accordance with this article.

Section 9
Responsibility and liability

Provision of UNCLOS	*Obligations of the flag State*
Article 235(2)	**Responsibility and liability**
	Obligation of States, including flag States, to ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction.

Provision of UNCLOS	*Obligations of the flag State*
Article 235(3)	Obligation of States, including flag States, to cooperate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for the payment of adequate compensation, such as compulsory insurance or compensation funds.

Section 10
Sovereign immunity

Provision of UNCLOS	*Obligations of the flag State*
Article 236	**Sovereign immunity** The provisions of this Convention regarding the protection and preservation of the marine environment do not apply to any warship, naval auxiliary or other vessels owned or operated by a State and used, for the time being, only on government non-commercial service. However, each flag State has an obligation to ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels owned or operated by it, that such vessels act in a manner consistent, so far as is reasonable and practicable, with this Convention.

Part XIII
Marine scientific research

Section 3
Conduct and promotion of marine scientific research

Provision of UNCLOS	*Obligations of the flag State*
Article 245	**Marine scientific research in the territorial sea** Obligation of the flag State to conduct marine scientific research in the territorial sea of a coastal State only with the express consent of and under the conditions set forth by such a State.
Article 246(2)	**Marine scientific research in the exclusive economic zone and on the continental shelf** Obligation of the flag State to conduct marine scientific research in the exclusive economic zone of a coastal State only with the consent of such State.
Article 246(8)	Obligation of the flag State conducting marine scientific research activities in the exclusive economic zone and on the continental shelf not to unjustifiably interfere with activities undertaken by the coastal State in the exercise of its sovereign rights and jurisdiction provided for in the Convention.

Provision of UNCLOS	*Obligations of the flag State*
Article 248	**Duty to provide information to the coastal State** Obligation of the flag State and the competent international organization which intend to undertake marine scientific research in the exclusive economic zone or on the continental shelf of a coastal State to provide that State, not less than six months in advance of the expected starting date of the marine scientific research project, with a full description of: (a) The nature and objectives of the project; (b) The method and means to be used, including name, tonnage, type and class of vessels and a description of the scientific equipment; (c) The precise geographical areas in which the project is to be conducted; (d) The expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal, as appropriate; (e) The name of the sponsoring institution, its director and the person in charge of the project; and (f) The extent to which it is considered that the coastal State should be able to participate or to be represented in the project.
Article 249	**Duty to comply with certain conditions** 1. Obligation of the flag State and the competent international organization, when undertaking marine scientific research in the exclusive economic zone or on the continental shelf of a coastal State, to comply with the following conditions: (a) To ensure the right of the coastal State, if it so desires, to participate or be represented in the marine scientific research project, especially on board research vessels and other craft or scientific research installations, when practicable, without payment of any remuneration to the scientists of the coastal State and without obligation to contribute towards the costs of the project; (b) To provide the coastal State, at its request, with preliminary reports, as soon as practicable, and with the final results and conclusions after the completion of the research; (c) To undertake to provide access for the coastal State, at its request, to all data and samples derived from the marine scientific research project and likewise to furnish it with data which may be copied and samples which may be divided without detriment to their scientific value; (d) If requested, to provide the coastal State with an assessment of such data, samples and research results or provide assistance in their assessment or interpretation; (e) To ensure, subject to paragraph 2, that the research results are made internationally available through appropriate national or international channels, as soon as practicable;

Provision of UNCLOS	*Obligations of the flag State*
	(f) To inform the coastal State immediately of any major change in the research programme; (g) Unless otherwise agreed, to remove the scientific research installations or equipment once the research is completed. 2. Obligation of the flag State to also comply with the conditions established by the laws and regulations of the coastal State for the exercise of its discretion to grant or withhold consent pursuant to article 246, paragraph 5, including requiring prior agreement for making internationally available the research results of a project of direct significance for the exploration and exploitation of natural resources.
Article 250	**Communications concerning marine scientific research projects** Obligation of the flag State to engage in communications concerning the marine scientific research projects through appropriate official channels, unless otherwise agreed.
Article 253(4)	**Suspension or cessation of marine scientific research activities** Obligation of the flag State or the competent international organization authorized to conduct marine scientific research activities in the exclusive economic zone or on the continental shelf of the coastal State to terminate the research activities, following notification by such a State of its decision to order suspension or cessation of such activities.
Article 254	**Rights of neighbouring landlocked and geographically disadvantaged States** 1. Obligation of the flag State and the competent international organization which have submitted to a coastal State a project to undertake marine scientific research referred to in article 246, paragraph 3, to give notice to the neighbouring landlocked and geographically disadvantaged States of the proposed research project, and to notify the coastal State thereof. 2. Obligation of the flag State and the competent international organization undertaking the proposed marine scientific research project to provide to the neighbouring landlocked and geographically disadvantaged States, at their request and when appropriate, relevant information as specified in article 248 and article 249, paragraph 1(f), after the consent has been given for such a project by the coastal State concerned, in accordance with article 246 and other relevant provisions of this Convention. 3. Obligation of the flag State or the competent international organization conducting the marine scientific research to give the opportunity to the neighbouring landlocked and geographically disadvantaged States referred to above, at their request, to participate, whenever feasible, in the proposed marine scientific research project through qualified experts appointed by them and not objected to by the coastal State, in accordance with the conditions agreed for the project, in conformity with the provisions of this Convention, between the coastal State concerned and the State or the competent international organization conducting the marine scientific research.

Provision of UNCLOS	Obligations of the flag State
	4. Obligation of the flag State and the competent international organization referred to in paragraph 1 to provide to the above-mentioned landlocked and geographically disadvantaged States, at their request, the information and assistance specified in article 249, paragraph 1(d), subject to the provisions of article 249, paragraph 2.

Section 4
Scientific research installations or equipment in the marine environment

Provision of UNCLOS	Obligations of the flag State
Article 260	**Safety zones** Obligation of all flag States to ensure that their vessels respect safety zones of a reasonable breadth not exceeding a distance of 500 metres that may be created around scientific research installations in accordance with the relevant provisions of this Convention.
Article 261	**Non-interference with shipping routes** Obligation of the flag State to ensure that the deployment and use of any type of scientific research installations or equipment do not constitute an obstacle to established international shipping routes.
Article 262	**Identification markings and warning signals** Obligation of the flag State to ensure that the installations or equipment referred to in this section bear identification markings indicating the State of registry or the international organization to which they belong and have adequate internationally agreed warning signals to ensure safety at sea and the safety of air navigation, taking into account the rules and standards established by competent international organizations.

Section 5
Responsibility and liability

Provision of UNCLOS	Obligations of the flag State
Article 263	**Responsibility and liability** 2. Obligation of the flag State and the competent international organization to provide compensation for damage resulting from measures taken in contravention of this Convention in respect of marine scientific research conducted by other States, their natural or juridical persons or by competent international organizations. 3. Obligation of the flag State and the competent international organization to bear responsibility and liability pursuant to article 235 for damage caused by pollution of the marine environment arising out of marine scientific research undertaken by them or on their behalf.

Section 6
Settlement of disputes and interim measures

Provision of UNCLOS	*Obligations of the flag State*
Article 265	**Interim measures** Obligation of the flag State or the competent international organization authorized to conduct a marine scientific research project not to allow research activities to commence or continue without the express consent of the coastal State concerned, pending settlement of a dispute in accordance with Part XV, sections 2 and 3

Table B

Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (United Nations Fish Stocks Agreement)

Part II
Conservation and management of straddling fish stocks and highly migratory fish stocks

Provision of UNCLOS	*Obligations of the flag State*
Article 5	**General principles** Obligation of the flag State, in giving effect to its duty to cooperate with the coastal State for the conservation and management of straddling fish stocks and highly migratory fish stocks, to adopt measures that: (a) Ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimum utilization; (b) Are based on the best scientific evidence available; (c) Apply the precautionary approach; (d) Apply the ecosystem approach; (e) Minimize pollution, waste, discards and catch by lost or abandoned gear; (f) Protect biodiversity in the marine environment; (g) Prevent or eliminate overfishing and excess fishing capacity and ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources; (h) Take into account the interests of artisanal and subsistence fishers;

Provision of UNCLOS	*Obligations of the flag State*
	(i) Allow collection and sharing, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as set out in annex I, as well as information from national and international research programmes. (j) Promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management; and (k) Implement and enforce conservation and management measures through effective monitoring, control and surveillance.
Article 6	**Application of the precautionary approach** Obligation of all States, including flag States, to apply the precautionary approach widely to the conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment.
Article 7(2)	**Compatibility of conservation and management measures** Obligation of the flag State and the coastal State to ensure compatibility of conservation and management measures established for the high seas with those adopted for areas under national jurisdiction in order to ensure the conservation and management of straddling fish stocks and highly migratory fish stocks.
Article 7(3)	Obligation of the flag State and the coastal State to make every effort to agree on conservation and management measures within a reasonable time.
Article 7(5)	Obligation of the flag State and the coastal State concerned to make every effort to enter into provisional arrangements of a practical nature, pending agreement on compatible conservation and management measures.
Article 7(8)	Obligation of the flag State to regularly inform other interested States, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures it has adopted for regulating the activities of vessels flying its flag which fish for such stocks on the high seas.

Part III
Mechanisms for international cooperation concerning straddling fish stocks and highly migratory fish stocks

Provision of UNCLOS	*Obligations of the flag State*
Article 8(2)	Obligation to enter into consultations in good faith without delay where fish stocks are threatened or where a new fishery is being developed in order to ensure proper conservation and management.
Article 8(3)	Obligation of the flag State fishing on the high seas for straddling fish stocks or highly migratory fish stocks and the relevant coastal State to give effect to their duty to cooperate by becoming members of the subregional or regional fisheries management organization or participants in the subregional or regional fisheries arrangement that has the competence to establish conservation and management measures for particular straddling fish stocks or highly migratory fish stocks, or by agreeing to apply the conservation and management measures established by such organization or arrangement.
Article 8(5)	Obligation of the flag State fishing on the high seas for a particular straddling fish stock or highly migratory fish stock, States in a subregion or region, and the relevant coastal State to cooperate to establish a subregional or regional fisheries management organization or to enter into other appropriate arrangements to ensure the conservation and management of such stock and participate in the work of the organization or arrangement, where there is no such organization or arrangement to establish conservation and management measures for that particular straddling fish stock or highly migratory fish stock.
Article 13	**Strengthening of existing organizations and arrangements** Obligation of States, including flag States, to cooperate to strengthen existing subregional and regional fisheries management organizations and arrangements in order to improve their effectiveness in establishing and implementing conservation and management measures for straddling fish stocks and highly migratory fish stocks.
Article 14	**Collection and provision of information and cooperation in scientific research** 1. Obligation of the flag State to ensure that fishing vessels flying its flag provide such information as may be necessary in order to fulfil its obligations under the Agreement. To this end, the flag State shall, in accordance with annex I: (a) Collect and exchange scientific, technical and statistical data with respect to fisheries for straddling fish stocks and highly migratory fish stocks; (b) Ensure that data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfil the requirements of subregional or regional fisheries management organizations or arrangements; and (c) Take appropriate measures to verify the accuracy of such data. 2. States, including flag States, shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements.

(a) To agree on the specification of data and the format in which they are to be provided to such organizations or arrangements, taking into account the nature of the stocks and the fisheries for those stocks; and

(b) To develop and share analytical techniques and stock assessment methodologies to improve measures for the conservation and management of straddling fish stocks and highly migratory fish stocks.

3. Consistent with Part XIII of the Convention, States, including flag States, shall cooperate, either directly or through competent international organizations, to strengthen scientific research capacity in the field of fisheries and promote scientific research related to the conservation and management of straddling fish stocks and highly migratory fish stocks for the benefit of all. To this end, a flag State or the competent international organization conducting such research beyond areas under national jurisdiction shall actively promote the publication and dissemination to any interested States of the results of that research and information relating to its objectives and methods and, to the extent practicable, shall facilitate the participation of scientists from those States in such research.

Article 16 **Areas of the high seas surrounded entirely by an area under the national jurisdiction of a single State**

1. Obligation of the flag State fishing for straddling fish stocks and highly migratory fish stocks in an area of the high seas surrounded entirely by an area under the national jurisdiction of a single State and the latter State to cooperate to establish conservation and management measures in respect of those stocks in the high seas area. Having regard to the natural characteristics of the area, the flag State and the coastal State shall pay special attention to the establishment of compatible conservation and management measures for such stocks pursuant to article 7. Measures taken in respect of the high seas shall take into account the rights, duties and interests of the coastal State under the Convention, shall be based on the best scientific evidence available and shall also take into account any conservation and management measures adopted and applied in respect of the same stocks in accordance with article 61 of the Convention by the coastal State in the area under national jurisdiction. The flag State and the coastal State shall also agree on measures for monitoring, control, surveillance and enforcement to ensure compliance with the conservation and management measures in respect of the high seas.

2. Pursuant to article 8, the flag State and the coastal State shall act in good faith and make every effort to agree without delay on conservation and management measures to be applied in the carrying out of fishing operations in the area referred to in paragraph 1. If, within a reasonable period of time, the fishing State concerned and the coastal State are unable to agree on such measures, they shall, having regard to paragraph 1, apply article 7, paragraphs 4, 5 and 6, relating to provisional arrangements or measures. Pending the establishment of such provisional arrangements or measures, the flag State concerned shall take measures in respect of vessels flying its flag in order that they not engage in fisheries which could undermine the stocks concerned.

Part IV
Non-members and non-participants

Provision of UNCLOS	*Obligations of the flag State*
Article 17	**Non-members of organizations and non-participants in arrangements** 1. A flag State which is not a member of a subregional or regional fisheries management organization or is not a participant in a subregional or regional fisheries management arrangement, and which does not otherwise agree to apply the conservation and management measures established by such organization or arrangement, is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and management of the relevant straddling fish stocks and highly migratory fish stocks. 2. Such flag State shall not authorize vessels flying its flag to engage in fishing operations for the straddling fish stocks or highly migratory fish stocks which are subject to the conservation and management measures established by such organization or arrangement. 3. States which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement shall, individually or jointly, request the fishing entities referred to in article 1, paragraph 3, which have fishing vessels in the relevant area to cooperate fully with such organization or arrangement in implementing the conservation and management measures it has established, with a view to having such measures applied de facto as extensively as possible to fishing activities in the relevant area. Such fishing entities shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures in respect of the stocks. 4. States which are members of a fisheries management organization or participants in a fisheries arrangement shall exchange information with respect to the activities of fishing vessels flying the flags of States which are neither members of the organization nor participants in the arrangement and which are engaged in fishing operations for the relevant stocks. They shall take measures consistent with this Agreement and international law to deter activities of such vessels which undermine the effectiveness of subregional or regional conservation and management measures.

Part V
Duties of the flag State

Provision of UNCLOS	*Obligations of the flag State*
Article 18	**Duties of the flag State** 1. A State whose vessels fish on the high seas shall take such measures as may be necessary to ensure that vessels flying its flag comply with subregional and regional conservation and management measures and that such vessels do not engage in any activity which undermines the effectiveness of such measures.

Provision of UNCLOS | *Obligations of the flag State*

2. A State shall authorize the use of vessels flying its flag for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels under the Convention and this Agreement.

3. Measures to be taken by a State in respect of vessels flying its flag shall include:

(a) Control of such vessels on the high seas by means of fishing licences, authorizations or permits, in accordance with any applicable procedures agreed at the subregional, regional or global level;

(b) Establishment of regulations:

(i) To apply terms and conditions to the licence, authorization or permit sufficient to fulfil any subregional, regional or global obligations of the flag State;

(ii) To prohibit fishing on the high seas by vessels which are not duly licensed or authorized to fish, or fishing on the high seas by vessels otherwise than in accordance with the terms and conditions of a licence, authorization or permit;

(iii) To require vessels fishing on the high seas to carry the licence, authorization or permit on board at all times and to produce it on demand for inspection by a duly authorized person; and

(iv) To ensure that vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of other States;

(c) Establishment of a national record of fishing vessels authorized to fish on the high seas and provision of access to the information contained in that record on request by directly interested States, taking into account any national laws of the flag State regarding the release of such information;

(d) Requirements for the marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems, such as the Food and Agriculture Organization of the United Nations Standard Specifications for the Marking and Identification of Fishing Vessels;

(e) Requirements for the recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with subregional, regional and global standards for collection of such data;

(f) Requirements for verifying the catch of target and non-target species through such means as observer programmes, inspection schemes, unloading reports, supervision of trans-shipment and monitoring of landed catches and market statistics;

(g) Monitoring, control and surveillance of such vessels, their fishing operations and related activities by, inter alia:

Provision of UNCLOS | *Obligations of the flag State*

(i) The implementation of national inspection schemes and subregional and regional schemes for cooperation in enforcement pursuant to articles 21 and 22, including requirements for such vessels to permit access by duly authorized inspectors from other States;

(ii) The implementation of national observer programmes and subregional and regional observer programmes in which the flag State is a participant, including requirements for such vessels to permit access by observers from other States to carry out the functions agreed under the programmes; and

(iii) The development and implementation of vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with any national programmes and those which have been subregionally, regionally or globally agreed among the States concerned;

(h) Regulation of trans-shipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined; and

(i) Regulation of fishing activities to ensure compliance with subregional, regional or global measures, including those aimed at minimizing catches of non-target species.

4. Where there is a subregionally, regionally or globally agreed system of monitoring, control and surveillance in effect, States shall ensure that the measures they impose on vessels flying their flag are compatible with that system.

Part VI
Compliance and enforcement

Provision of UNCLOS | *Obligations of the flag State*

Article 19 **Compliance and enforcement by the flag State**

1. A State shall ensure compliance by vessels flying its flag with subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks. To this end, that State shall:

(a) Enforce such measures irrespective of where violations occur;

(b) Investigate immediately and fully any alleged violation of subregional or regional conservation and management measures, which may include the physical inspection of the vessels concerned, and report promptly to the State alleging the violation and the relevant subregional or regional organization or arrangement on the progress and outcome of the investigation;

(c) Require any vessel flying its flag to give information to the investigating authority regarding vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation;

	(d) If satisfied that sufficient evidence is available in respect of an alleged violation, refer the case to its authorities with a view to instituting proceedings without delay in accordance with its laws and, where appropriate, detain the vessel concerned; and (e) Ensure that, where it has been established, in accordance with its laws, that a vessel has been involved in the commission of a serious violation of such measures, the vessel does not engage in fishing operations on the high seas until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with. 2. All investigations and judicial proceedings shall be carried out expeditiously. Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities. Measures applicable in respect of masters and other officers of fishing vessels shall include provisions which may permit, inter alia, refusal, withdrawal or suspension of authorizations to serve as masters or officers on such vessels.
Article 20(1)	**International cooperation in enforcement** Obligation of States, including flag States, to cooperate, either directly or through subregional or regional fisheries management organizations or arrangements, to ensure compliance with and enforcement of subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks.
Article 20(2)	Obligation of States, including flag States, to cooperate with flag States conducting an investigation of a violation by their vessel upon request.
Article 20(3)	Obligation of the flag State conducting an investigation of an alleged violation of conservation for straddling fish stocks and highly migratory fish stocks, directly or through the relevant subregional or regional fisheries management organization or arrangement, to provide information on the progress and outcome of such investigation to all States having an interest in, or affected by, the alleged violation.
Article 20(4)	Obligation of States, including flag States, to assist each other in identifying vessels reported to have engaged in activities undermining the effectiveness of subregional, regional or global conservation and management measures.
Article 20(5)	Obligation of States, including flag States, to the extent permitted by national laws and regulations, to establish arrangements for making available to prosecuting authorities in other States evidence relating to alleged violations of subregional, regional or global conservation and management measures.
Article 20(6)	Where there are reasonable grounds for believing that a vessel on the high seas has been engaged in unauthorized fishing within an area under the jurisdiction of a coastal State, the flag State of that vessel, at the request of the coastal State concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the coastal State in taking appropriate enforcement action in such cases and may authorize the relevant authorities of the coastal State to board and inspect the vessel on the high seas. This paragraph is without prejudice to article 111 of the Convention.

Provision of UNCLOS	*Obligations of the flag State*
Article 21(2)	**Subregional and regional cooperation in enforcement** Obligation of States, including flag States, to establish, through subregional or regional fisheries management organizations or arrangements, procedures for boarding and inspection pursuant to paragraph 1, as well as procedures to implement other provisions of this article.[77] Such procedures shall be consistent with this article and the basic procedures set out in article 22 and shall not discriminate against non-members of the organization or non-participants in the arrangement. Boarding and inspection as well as any subsequent enforcement action shall be conducted in accordance with such procedures. States shall give due publicity to procedures established pursuant to this paragraph.
Article 21(4)	Obligation of inspecting States to clearly mark inspecting vessels as being on government service and to inform other States of the form of identification issued to inspectors. Obligation of a flag State, at the time of becoming a party to this Agreement, to designate an appropriate authority to receive notifications from inspecting States and to give due publicity of such designation through the relevant subregional or regional fisheries management organization or arrangement.
Article 21(5)	Obligation of inspecting States to secure evidence of a violation and to promptly notify the flag State.
Article 21(6)	Obligation of the flag State to respond, within three working days of its receipt, or such other period as may be prescribed in procedures established in accordance with paragraph 2, to notification by the inspecting State indicating that there are clear grounds for believing that a vessel flying its flag has engaged in an activity contrary to the conservation and management measures of straddling fish stocks and highly migratory fish stocks, and to either: (a) Fulfil, without delay, its obligations under article 19 to investigate and, if evidence so warrants, take enforcement action with respect to the vessel, in which case it shall promptly inform the inspecting State of the results of the investigation and of any enforcement action taken; or (b) Authorize the inspecting State to investigate.
Article 21(7)	Obligation of the flag State, if evidence so warrants, to fulfil its obligations to take enforcement action with respect to the vessel flying its flag.
Article 21(8)	Obligation of the flag State and the inspecting State and, as appropriate, the port State to take all necessary steps to ensure the well-being of the crew regardless of their nationality where, following a boarding and inspection, there are clear grounds for believing that a vessel has committed a serious violation and the flag State has either failed to respond or failed to take action under paragraphs 6 and 7 and the inspectors have required the master to assist in further investigation, by bringing the vessel without delay to nearest appropriate port or to such other port as may be specified in procedures established in accordance with paragraph 2.

Provision of UNCLOS	*Obligations of the flag State*
Article 22(3)	**Basic procedures for boarding and inspection pursuant to article 21** Obligation of the flag State to ensure that vessel masters: (a) Accept and facilitate prompt and safe boarding by the inspectors; (b) Cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures; (c) Do not obstruct, intimidate or interfere with the inspectors in the performance of their duties; (d) Allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection; (e) Provide reasonable facilities, including, where appropriate, food and accommodation, to the inspectors; and (f) Facilitate safe disembarkation by the inspectors.
Article 22(4)	Obligation of the flag State, in the event that the master of a vessel refuses to accept boarding and inspection in accordance with this article and article 21, except in circumstances where, in accordance with generally accepted international regulations, procedures and practices relating to safety at sea, it is necessary to delay the boarding and inspection, to direct the master of the vessel to submit immediately to boarding and inspection and, if the master does not comply with such direction, to suspend the vessel's authorization to fish and order the vessel to return immediately to port. The flag State shall advise the inspecting State of the action it has taken when the circumstances referred to in this paragraph arise.

Table C
Other international instruments

Section 1
Nationality of ships, registration of ships

International instrument	*Relevant provision(s)*
UNCLOS	*Article 91(1), 91(2), 94(2)(a)*
Convention on the High Seas, 1958	*Article 5(1)* Obligation of States to fix the conditions for the grant of their nationality to ships, for the registration of ships in their territory and for the right to fly their flags. Obligation of States to have a genuine link with ships flying their flag and to effectively exercise their jurisdiction and control in administrative, technical and social matters over ships flying their flag.

International instrument	*Relevant provision(s)*
	Article 5(2) Obligation of States to issue to ships to which they have granted the right to fly their flag documents to that effect.
Convention relating to Registration of Rights in respect of Vessels under Construction, 1967 (not yet in force)	*See applicable provisions*
United Nations Convention on Conditions for Registration of Ships, 1986 (not yet in force)	*See applicable provisions*
Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, 1967 (not yet in force)	*Article 3* Obligation of States not to permit de-registration of a vessel without the written consent of all holders of registered mortgages; obligation of States to prevent double registration of vessels. *Article 11* Obligation of States to record changes in registration.
International Convention on Maritime Liens and Mortgages, 1993 (not yet in force)	*Article 3* Obligation of States not to permit the owner to de-register the vessel unless all registered mortgages, "*hypothèques*" or charges are previously deleted or the written consent of all holders of such mortgages, "*hypothèques*" or charges is obtained; obligation to prevent double registration of vessels; article 16: obligation to prevent vessels registered in a State to temporarily fly the flag of another State unless all registered mortgages, "*hypothèques*" or charges on that vessel have been previously satisfied or the written consent of the holders of all such mortgages, "*hypothèques*" or charges has been obtained.
Treaty on International Commercial Navigation Law, 1940	*Article 1* Obligation of States to issue certificate with proof of nationality of vessels.

Section 2
Tonnage measurement of ships

International instrument	*Relevant provision(s)*
Convention for a Uniform System of Tonnage Measurement of Ships, 1947 and Protocol of 1947	*See applicable provisions*
International Convention on Tonnage Measurement of Ships, 1969	*See applicable provisions*

Section 3
Ship construction, equipment and maintenance thereof

International instrument	*Relevant provision(s)*
UNCLOS	*Articles 94(3)(a), 94(4)(a), 217(2)*
Convention on the High Seas, 1958	*Article 10* Obligation of States to take measures as are necessary to ensure safety at sea with regard to the construction, equipment and seaworthiness of ships.
International Convention on Load Lines, 1966 and Protocol of 1988	*See applicable provisions*
International Convention for the Safety of Life at Sea (SOLAS 1974), 1974 and Protocol of 1988	*See applicable provisions*
International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto (MARPOL 73/78)	*See applicable provisions*
International Convention for Safe Containers (CSC), 1972	*See applicable provisions*
International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code), 1983	*See applicable provisions*
International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code), 1983	*See applicable provisions*
International Code for the Safe Carriage of Grain in Bulk (Grain Code), 1991	*See applicable provisions*
International Code of Safety for High-Speed Craft (HSC Code), 1994	*See applicable provisions*
International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code), 1993	*See applicable provisions*
International Life-Saving Appliances Code (LSA Code), 1996	*See applicable provisions*
International Code for Application of Fire Test Procedures (FTP Code), 1996	*See applicable provisions*
International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships (INF Code), 1999	*See applicable provisions*
Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing	*See applicable provisions*

International instrument	*Relevant provision(s)*
Vessels, 1977 (not yet in force)	
Special Trade Passenger Ships Agreement, 1971, and Protocol on Space Requirements for Special Trade Passenger Ships, 1973 (regional application)	*See applicable provisions*
Agreement concerning Specific Stability Requirements for Ro-Ro (roll on/roll off) Passenger Ships Undertaking Regular Scheduled International Voyages Between, To or From Designated Ports in North-West Europe and the Baltic Sea, 1996 (regional application)	*See applicable provisions*
The Accommodation of Crews Convention (Revised), 1949 (No. 92)	*See applicable provisions*
The Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133)	*See applicable provisions*

Section 4
Manning of ships

International instrument	*Relevant provision(s)*
UNCLOS	*Articles 94(3)(b), 94(4)(b), 94(4)(c), 217(2)*
Convention on the High Seas, 1958	*Article 10* Obligation of States to take measures as are necessary to ensure safety at sea with regard to the manning of ships and labour conditions for crews taking into account the applicable international labour instruments.
SOLAS 1974	*See applicable provisions*
Principles of Safe Manning (IMO Assembly resolution A.890(21), 1999)	*See applicable provisions*
United Nations Convention on Conditions for Registration of Ships, 1986 (not yet in force)	*Article 9* Obligation of States to observe the principle that a satisfactory part of the complement consisting of officers and crew of ships flying their flag are nationals or persons domiciled or lawfully in permanent residence in the flag State.
The Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)	*See applicable provisions*

Section 5
Training, certification and watchkeeping for seafarers

International instrument	*Relevant provision(s)*
UNCLOS	*Article 94(3)(b)*
International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 as amended	*See applicable provisions*
International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), 1995 (not yet in force)	*See applicable provisions*
Document for Guidance on Training and Certification of Fishing Vessel Personnel, 2000	*See applicable provisions*

Section 6
Labour conditions for seafarers

International instrument	*Relevant provision(s)*
UNCLOS	*Article 94(3)(b)*
Convention on the High Seas, 1958	*Article 10* Obligation of States to take measures as are necessary to ensure safety at sea with regard to the labour conditions for crews taking into account the applicable international labour instruments.

International labour standards adopted by ILO

General

National Seamen's Codes Recommendation, 1920 (No. 9)

Seafarers' Engagement (Foreign Vessels) Recommendation, 1958 (No. 107)

Social Conditions and Safety (Seafarers) Recommendation, 1958 (No. 108)

Seafarer's Identity Documents Convention, 1958 (No. 108)

Employment of Seafarers (Technical Developments) Recommendation, 1970 (No. 139)

Continuity of Employment (Seafarers) Convention, 1976 (No. 145)

Continuity of Employment (Seafarers) Recommendation, 1976 (No. 154)

Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)

Merchant Shipping (Improvement of Standards) Recommendation, 1976 (No. 155)

Protocol to the Merchant Shipping (Minimum Standards) Convention, 1996 (No. 147)

Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)

International instrument	*Relevant provision(s)*
Conditions of admission to employment	
Minimum Age (Sea) Convention, 1920 (No. 7)	
Minimum Age (Sea) Convention (Revised), 1936 (No. 58)	
Training and entry into employment	
The Placing of Seamen Convention, 1920 (No. 9)	
Seamen's Articles of Agreement Convention, 1926 (No. 22)	
Vocational Training (Seafarers) Recommendation, 1970 (No. 137)	
Recruitment and Placement of Seafarers Recommendation, 1986 (No. 186)	
Recruitment and Placement of Seafarers Convention, 1996 (No. 179)	
General conditions of employment	
Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)	
Medical Examination (Seafarers) Convention, 1946 (No. 73)	
Repatriation of Seamen Convention, 1926 (No. 23)	
Repatriation (Ship Masters and Apprentices) Recommendation, 1926 (No. 27)	
Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91)	
Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109)	
Wages, Hours of Work and Manning (Sea) Recommendation, 1958 (No. 109)	
Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)	
Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187)	
Seafarers' Annual Leave with Pay Convention, 1976 (No. 146)	
Protection of Young Seafarers Recommendation, 1976 (No. 153)	
Repatriation of Seafarers Convention (Revised), 1987 (No. 166)	
Repatriation of Seafarers Recommendation, 1987 (No. 174)	
Certificates of competency	
Officers' Competency Certificates Convention, 1936 (No. 53)	
Certification of Ship's Cooks Convention, 1946 (No. 69)	
Certification of Able Seamen Convention, 1946 (No. 74)	
Safety, health and welfare	
Seaman's Welfare in Ports Recommendation, 1936 (No. 48)	

International instrument	*Relevant provision(s)*
Seafarer's Welfare Recommendation, 1970 (No. 138)	
Seafarers' Welfare Convention, 1987 (No. 163)	
Seafarers' Welfare Recommendation, 1987 (No. 173)	
Food and Catering (Ships' Crews) Convention, 1946 (No. 68)	
Bedding, Mess Utensils and Miscellaneous Provisions (Ships' Crews) Recommendation, 1946 (No.78)	
Accommodation of Crews Convention (Revised), 1949 (No. 92)	
Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133)	
Crew Accommodation (Air Conditioning) Recommendation, 1970 (No. 140)	
Crew Accommodation (Noise Control) Recommendation, 1970 (No. 141)	
Ships' Medicine Chests Recommendation, 1958 (No. 105)	
Medical Advice at Sea Recommendation, 1958 (No. 106)	
Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)	
Prevention of Accidents (Seafarers) Recommendation, 1970 (No. 142)	
Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164)	
Labour inspection	
Labour Inspection (Seamen) Recommendation, 1926 (No. 28)	
Labour Inspection (Seafarers) Convention, 1996 (No. 178)	
Labour Inspection (Seafarers) Recommendation, 1996 (No. 185)	
Social security	
Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)	
Unemployment Insurance (Seamen) Recommendation, 1920 (No. 10)	
Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)	
Sickness Insurance (Sea) Convention, 1936 (No. 56)	
Seafarers' Pensions Convention, 1946 (No. 71)	
Social Security (Seafarers) Convention (Revised), 1987 (No. 165)	
International labour standards relating to fishermen	
Hours of Work (Fishing) Recommendation, 1920 (No. 7)	
Minimum Age (Fishermen) Convention, 1959 (No. 112)	
Medical Examination (Fishermen) Convention, 1959 (No. 113)	

International instrument	*Relevant provision(s)*
Fishermen's Articles of Agreement Convention, 1959 (No. 114)	
Fishermen's Competency Certificates Convention, 1966 (No. 125)	
Accommodation of Crews (Fishermen) Convention, 1966 (No. 126)	
Vocational Training (Fishermen) Recommendation, 1966 (No. 126)	
International labour standards applicable to all workers including seafarers	
Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)	
Right to Organize and Collective Bargaining Convention, 1949 (No. 98)	
Collective Bargaining Convention, 1981 (No. 154)	
Medical Care and Sickness Benefits Convention, 1969 (No. 130)	
Human rights instruments — global	
Universal Declaration of Human Rights, 1948	*Article 20* Right of individual to freedom of peaceful association.
	Article 22 Right of individual social security.
	Article 23 Right of individual to just and favourable conditions of work and to protection against unemployment; right to equal pay for equal work; and right to form and to join trade unions.
	Article 24 Right of individual to rest and leisure.
International Covenant on Civil and Political Rights, 1966	*Article 2* State to undertake to respect and to ensure rights recognized in Covenant, without distinction of any kind, inter alia:
	Article 22 Right of individual to associate with others, including right to form and join trade unions for protection of his interests (not clear if it applies to individuals on vessels).
International Covenant on Economic, Social and Cultural Rights, 1966	*Article 7* States to recognize the right of everyone to the enjoyment of just and favourable conditions of work.
	Article 8 States to undertake to ensure right of individual to form and join trade union.
	Article 9 State to recognize right of individual to social security.
	Article 12 State to recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

International instrument	*Relevant provision(s)*
Convention on the Rights of the Child, 1990	*Article 15* State to recognize the right of the child to freedom of association.
	Article 25 State to recognize the right of the child to the enjoyment of the highest attainable standard of health.
	Article 26 Obligation of a State to recognize for every child the right to benefit from social security.
	Article 31 State to recognize the right of the child to rest and leisure.
	Article 32(1) State to recognize the right of child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
	Article 32(2) Obligation of a State to take legislative, administrative, social and educational measures to ensure the implementation of the present article.
Convention concerning Discrimination in Respect of Employment and Occupation, 1958 (ILO Convention No. 111)	*Article 2* State to undertake to promote equality of opportunity and treatment in respect of employment and occupation.
Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951 (ILO Convention No. 100)	*Article 2* Obligation of a State to ensure equal remuneration for men and women for work of equal value.
Convention relating to the Status of Refugees, 1951	*Articles 15, 17* Obligation of a State to accord most favourable treatment accorded to non-nationals also to refugees with regard to trade unions and the right to engage in wage-earning employment.
	Article 24 Obligation of the State to accord the same rights to refugees as to its nationals as regards subject matters governed by labour legislation, etc.
Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live, 1985	*Article 8(a), (b), (c)* Right of alien to safe and healthy working conditions, to fair wages and equal remuneration for work of equal value without distinction, as well as the right to join trade unions and to social security.
ILO Declaration on Fundamental Principles and Rights at Work, 1998	
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990	

International instrument	*Relevant provision(s)*
Human rights instruments — regional	
African Charter on Human and Peoples' Rights (Banjul Charter), 1981	*Article 1* Obligation of the State to recognize rights enshrined in chapter I and obligation to adopt legislative or other measures to give effect to them, inter alia:
	Article 10 Right of the individual to free association.
	Article 15 Right of the individual to work under equitable and satisfactory conditions, including equal payment for equal work.
African Charter on the Rights and Welfare of the Child, 1990	*Article 1* Obligation of a State to recognize the rights, freedoms and duties enshrined in the Charter and to undertake the necessary steps to adopt legislative or other measures as may be necessary to give effect to provisions of the Charter, inter alia:
	Article 8 Right of every child to free association.
	Article 12 State to recognize the right of the child to rest and leisure.
Arab Charter on Human Rights, 1994 (not yet in force)	*Article 2* State to undertake to ensure to all individuals within its territory and subject to its jurisdiction the right to enjoy all the rights and freedoms recognized herein, without any distinction, inter alia:
	Article 29 Right of individual to form trade unions and right to strike.
	Article 30 State to guarantee every citizen's right to comprehensive social security.
	Article 32 Obligation of a State to ensure equality of opportunity in regard to work, fair wage and equal remuneration for work of equal value.
American Convention on Human Rights (Pact of San José), 1969	*Article 1* State to undertake to respect the rights and freedoms recognized in the Convention and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination.
	Article 2 State to undertake to adopt, in accordance with its constitutional processes and the provisions of the Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.
	Article 16 Right of individual to associate freely for labour or other purposes.

International instrument	*Relevant provision(s)*
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), 1988	*Article 1* State to undertake to adopt necessary measures to achieve progressively the full observance of the rights recognized in this Protocol, inter alia:
	Article 9 Right of individual to social security.
	Article 7 State to undertake to guarantee just, equitable and satisfactory working conditions for everybody.
	Article 8 Obligations of a State to ensure the right of workers to organize trade unions and right to strike.
American Declaration of the Rights and Duties of Man, 1948	*Article XIV* Right of individual to work, under proper conditions.
	Article XV Right of individual to leisure time.
	Article XVI Right of individual to social security.
	Article XXII Right of individual to associate with others in labour unions.
European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, as amended by Protocol No. 11, 1988	*Article 1* Obligation of a State to secure to everyone within its jurisdiction the rights and freedoms defined in section I of the Convention, inter alia:
	Article 11 Right of individual to associate with others, including the right to form and to join trade unions for the protection of his interests
European Social Charter, 1961	*Articles 2, 3* State to undertake to provide just conditions of work and safe and healthy working conditions.
	Article 5 State to undertake that domestic law shall not be such as to impair the right of workers to form and join organizations for the protection of their economic and social interests.
	Article 6 State to undertake to ensure effective exercise of right to bargain collectively.
	Article 12 States to undertake to establish or maintain a system of social security.
Additional Protocol to the European Social Charter, 1988 (not yet in force)	*Part II* States to undertake to consider themselves bound by the obligations laid down in the following articles, inter alia:
	Article 1 Right of individual to equal opportunities and treatment in employment without discrimination on the grounds of sex.
	Article 3 State to undertake to adopt measures enabling workers to contribute to determination and improvement of working conditions.

Section 7
Transport of goods

International instrument
UNCLOS (*Articles 22(2), 23*)
SOLAS 1974, as amended
International Maritime Dangerous Goods (IMDG) Code
International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code)
International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code)
Code for Safe Practice for Solid Bulk Cargoes (BC Code)
Code for the Safe Carriage of Irradiated Nuclear Fuel, Plutonium and High-level Radioactive Waste in Flasks on Board Ships (INF Code)
IAEA Transport Regulations, 1996
Convention on the Physical Protection of Nuclear Material, 1980

Section 8
Transport of passengers

International instrument
SOLAS 1974, as amended
International Sanitary Regulations, 1951
International Health Regulations, 1969
International Convention for the Unification of Certain Rules of Law relating to the Carriage of Passengers by Sea (with Protocol), 1961
International Convention for the Unification of Certain Rules of Law relating to the Carriage of Passengers' Luggage by Sea, 1967 (not yet in force)
Special Trade Passenger Ships Agreement, 1971, and Protocol of 1973
Athens Convention relating to the Carriage of Passengers and Their Luggage by Sea, 1974, and its 1976 and 1990 (not yet in force) and 2002 Protocols
Agreement between Denmark, Norway and Sweden to Facilitate the Sanitary Control of Traffic between Those Countries, 1955

Section 9
Maritime traffic

International instrument
Convention on Facilitation of International Maritime Traffic, 1965, as amended
Agreement on Cooperation with regard to Maritime Merchant Shipping, 1971

Section 10
Safety of navigation

International instrument	Relevant provision(s)
UNCLOS	*Articles 94(3)(c), 21(4), 39(2)(a), 225, 261, 262.*
Convention on the High Seas, 1958	*Article 10* Obligation of States to take measures as are necessary to ensure safety at sea with regard to the use of signals, the maintenance of communications and the prevention of collisions.
Convention on the Continental Shelf, 1958	*Article 5* Obligation of States to respect safety zones.
SOLAS 1974, as amended	
Convention on the International Regulations for Preventing Collisions at Sea, 1972	

Section 11
Pollution from vessels

International instrument	Relevant provision(s)
Global instruments	
UNCLOS	*Articles 211(2), 211(3), 217(1), 217(3), 217(4), 217(6), 217(7), 217(8), 220(4)*
Convention on the High Seas, 1958	*Article 24* Obligation of States to draw up regulations to prevent pollution of the seas by the discharge of oil from ships.
International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto (MARPOL 73/78)	
International Convention on the Control of Harmful Anti-fouling Systems on Ships (not yet in force), 2001	
International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC), 1990, and its Protocol	

International instrument	*Relevant provision(s)*
Regional instruments	
Convention for the Protection of the Mediterranean Sea against Pollution, 1976, and 1995 amendment (not yet in force)	*Article 6*
Protocol (to the Convention for the Protection of the Mediterranean Sea against Pollution) concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea, 2002 (not yet in force)	*Article 4*
Kuwait Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution, 1978	*Article IV*
Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region, 1981	*Article 5*
Convention for the Protection of the Marine Environment and Coastal Area of the South-East Pacific, 1981	*Article 4*
Protocol (to the Convention for the Protection of the Marine Environment and Coastal Area of the South-East Pacific) for the Conservation and Management of Protected South-East Areas of the South-East Pacific, 1989	*Article VII*
Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment, 1982	*Article IV*
Protocol (to the Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment) concerning Regional Cooperation in Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency, 1982	*Article IV*
Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, 1983	*Article 5*
Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region, 1985	*Article 5*
Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, 1986	*Article 6*
Protocol on Environmental Protection to the Antarctic Treaty, 1991	*Annex IV*

International instrument	*Relevant provision(s)*
Convention on the Protection of the Black Sea against Pollution, 1992	*Article VIII*
Convention for the Protection of the Marine Environment of the Baltic Sea Area, 1992	*Article 8* *Annex IV*
Association of South-East Asian Nations (ASEAN) Agreement on the Conservation of Nature and Natural Resources, 1985	*Article 11*

Section 12
Pollution by dumping and waste management

International instrument	*Relevant provision(s)*
Global instruments	
UNCLOS	*Articles 210(5), 216(1)(b)*
Convention on the High Seas, 1958	*Article 25* Obligation of States to take measures to prevent pollution of the seas from the dumping of radioactive waste, taking into account any standards and regulations which may be formulated by the competent international organizations.
Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, and its 1996 Protocol	
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989	
Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 1997	
Regional instruments	
Convention for the Protection of the Mediterranean Sea against Pollution, 1976, and its 1995 amendment (not yet in force)	*Article 5*
Protocol (to the Convention for the Protection of the Mediterranean Sea against Pollution) for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft, 1976, and its 1995 amendment (not yet in force)	*Articles 10 and 11*
Protocol (to the Convention for the Protection of the Mediterranean Sea against Pollution) on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal, 1996 (not yet in force)	*Article 5*
Protocol (to the Convention for the Protection of the Mediterranean Sea against Pollution) concerning	*Article 6*

International instrument	*Relevant provision(s)*
Specially Protected Areas and Biological Diversity in the Mediterranean, 1995	
Kuwait Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution, 1978	*Article V*
Protocol (to the Kuwait Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution) on the Control of Marine Transboundary Movements and Disposal of Hazardous Wastes and Other Wastes, 1998	*Articles 4 and 6*
Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region, 1981	*Article 6*
Convention for the Protection of the Marine Environment and Coastal Area of the South-East Pacific, 1981	*Article 4*
Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment, 1982	*Article V*
Protocol (to the Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment) concerning Regional Cooperation in Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency, 1982	*Article V*
Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, 1983	*Article 6*
Protocol (to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region) concerning Specially Protected Areas and Wildlife, 1990	*Article 5*
Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region, 1985	*Article 6*
Protocol (to the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region) concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region, 1985	*Article 10*
South Pacific Nuclear Free Zone Treaty, 1985	*Article 7*
Convention for the Protection of the Natural Resources	*Article 10*

International instrument	Relevant provision(s)
and Environment of the South Pacific Region, 1986	
Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region, 1995	*Article 4*
Protocol (to the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region) for the Prevention of Pollution of the South Pacific Region by Dumping, 1986	*Articles 11 and 12*
Protocol (to the Convention for the Protection of the Marine Environment and Coastal Area of the South-East Pacific) for the Protection of the South-East Pacific against Radioactive Pollution, 1989	*Articles II, XI and XII*
Protocol (to the Convention for the Protection of the Marine Environment and Coastal Area of the South-East Pacific) for the Conservation and Management of Protected Areas of the South-East Pacific, 1989	*Article VII*
Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, 1991	*Article 4*
Central American Regional Agreement on Transboundary Movement of Hazardous Wastes, 1992	*Article 3*
Convention for the Protection of the Marine Environment of the Baltic Sea Area, 1992	*Article 11* *Annex V*
Convention on the Protection of the Black Sea against Pollution, 1992	*Article X*
Protocol (to the Convention on the Protection of the Black Sea against Pollution) on the Protection of the Black Sea Marine Environment against Pollution by Dumping, 1992	*Articles 7 and 8*
Convention for the Protection of the Marine Environment of the North-East Atlantic, 1992	*Article 4* *Annex II*
Pelindaba Text of the African Nuclear-Weapon-Free-Zone Treaty, 1995	*Article 7*
Treaty on the South-East Asia Nuclear-Weapon-Free Zone, 1995	*Article 3*
Protocol on Environmental Protection to the Antarctic	*Annex III*

International instrument	*Relevant provision(s)*
Treaty, 1991	

Section 13
Pollution incidents/emergency response

International instrument	*Relevant provision(s)*
Global instruments	
UNCLOS	*Articles 198 and 199*
MARPOL 73/78	
International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990	
Protocol on Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances, 2000	
Convention on Early Notification of a Nuclear Accident, 1986	
Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986	
International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships (INF Code), 1999	
Regional instruments	
Agreement between Denmark, Finland, Norway and Sweden concerning Cooperation in Measures to Deal with Pollution of the Sea by Oil, 1971	*Article 6*
Protocol (to the Kuwait Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution) concerning Regional Cooperation in Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency, 1978	*Article VII*
Protocol (to the Convention for the Protection of the Mediterranean Sea against Pollution) concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency, 1976	*Article 8*
Protocol (to the Convention for the Protection of the Mediterranean Sea against Pollution) concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea, 2002 (not yet in force)	*Article 9*
Agreement on Regional Cooperation in Combating Pollution of the South-East Pacific by Hydrocarbons or Other Harmful Substances in Cases of Emergency,	*Article IX*

International instrument	*Relevant provision(s)*
1981	
Protocol (to the Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region) concerning Cooperation in Combating Pollution in Cases of Emergency, 1981	*Article 7*
Protocol (to the Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment) concerning Regional Cooperation in Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency, 1982	*Article IX*
Protocol (to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region) concerning Cooperation in Combating Oil Spills in the Wider Caribbean Region, 1983	*Article 5*
Agreement for Cooperation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances, 1983	*Article 5*
Protocol (to the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region) concerning Cooperation in Combating Marine Pollution in Cases of Emergency in the Eastern African Region, 1985	*Article 5*
Protocol (to the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region) concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region, 1986	*Article 5*
Accord of Cooperation for the Protection of the Coasts and Waters of the North-East Atlantic against Pollution due to Hydrocarbons or Other Harmful Substances, 1990	*Article 7*
Protocol on Environmental Protection to the Antarctic Treaty, 1991	*Article 15*
Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1992	*Article 13*
Protocol (to the Convention on the Protection of the Black Sea against Pollution) on Cooperation in Combating Pollution of the Black Sea Marine Environment by Oil and Other Harmful Substances in	*Articles 3 and 6*

International instrument	*Relevant provision(s)*
Emergency Situations, 1992	

Section 14
Assistance at sea

International instrument	*Relevant provision(s)*
UNCLOS	*Article 98(1)(a), (b) and (c)*
Convention on the High Seas, 1958	*Article 12* Obligation of States to require masters of ships sailing under their flags, insofar as they can do so without serious danger to the ships, the crews or the passengers: (a) To render assistance to any person found at sea in danger of being lost; (b) To proceed with all possible speed to the rescue of persons in distress if informed of their need of assistance, insofar as such action may reasonably be expected of them; (c) After a collision, to render assistance to the other ship, her crew and her passengers and, where possible, to inform the other ship of the name of their own ship, its port of registry and the nearest port at which it will call.
SOLAS 1974, as amended	
International Convention on Maritime Search and Rescue, 1979	
Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, 1910	
International Convention on Salvage, 1989	

Section 15
Casualty investigation

International instrument	*Relevant provision(s)*
UNCLOS	*Article 94(7)*
SOLAS 1974, as amended	*Regulation I/21*
MARPOL 73/78	*Article 12*
Load Lines Convention	*Article 23*
Code for the Investigation of Marine Casualties and Incidents (IMO Assembly resolution A.849(20), as amended by resolution A.884(21))	*See applicable provisions*

Section 16
Responsibility and liability

International instrument	*Relevant provision(s)*
UNCLOS	*Article 263(1), 263(2), 263(3)*
Oil and other substances, except nuclear	
International Convention on Civil Liability for Oil Pollution Damage, 1969, and its Protocols of 1976 and 1992, as amended in 2000	*Article (VII)(10) 1969 Convention*
International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, and its Protocols of 1976 and 1992, as amended in 2000, and its Protocol of 2003	*See applicable provisions*
Convention on Limitation of Liability for Maritime Claims, 1976, and its Protocol of 1996 (Protocol not yet in force)	*See applicable provisions*
International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (not yet in force)	*Article 12(10)*
International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001	*Article 7(7), (11)*
Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and Their Disposal, 1999	*See applicable provisions*

International instrument	*Relevant provision(s)*
Nuclear substances	
Convention on the Liability of Operators of Nuclear Ships, 1962 (not yet in force)	*Article III(2)*
Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, 1971	*See applicable provisions*
Vienna Convention on Civil Liability for Nuclear Damage, 1963, and its Optional Protocol concerning the Compulsory Settlement of Disputes, 1963, and Protocol to amend the Vienna Convention on Civil Liability for Nuclear Damage, 1997 (Protocol not yet in force)	*Article III* Obligation of States[78] to include a statement in the security certificate that the person named is an operator within the meaning of the Convention. *Article VII* Obligation of States to specify terms of insurance or security to be required from operators.
Paris Convention on Third Party Liability in the Field of Nuclear Energy, 1960, and Protocols of 1964 and 1982	*Article 4(c)* Obligation of States to include a statement in the security certificate that the person named is an operator within the meaning of the Convention. *Article 10(a)* Obligation of States to specify terms of insurance or security to be required from operators.
Convention Supplementary to the Paris Convention on Third Party Liability in the Field of Nuclear Energy, as amended, 1963, and Protocols of 1964 and 1982	*See applicable provisions*
Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention on Civil Liability for Nuclear Damage, 1988[79]	*See applicable provisions*
Convention on Supplementary Compensation for Nuclear Damage, 1997 (not yet in force)	*Article V.1(b)(i)* Obligation of States to ensure compensation in cases of nuclear damage suffered on board or by a ship flying the flag of a Contracting Party. *Article VI* Obligation of States to inform of a nuclear accident.
Convention on Early Notification of a Nuclear Accident, 1986	*See applicable provisions*

Section 17
Maritime claims

International instrument	*Relevant provision(s)*
International Convention for the Unification of Certain Rules of Law relating to Maritime Liens and Mortgages, 1926	*Article 1* Obligation of States to recognize liens, hypothecations and other similar charges upon vessels, duly effected in accordance with the law of a Contracting State to which the vessel belongs, and registered in a public register.
	Article 12 Obligation of States to prescribe the nature and form of documents to be carried on board vessels, in which entry must be made of the mortgages.
Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages, 1967 (not yet in force)	*Article 2* Obligation of States to determine ranking of mortgages.
	Article 3 Obligation of States not to permit de-registration of a vessel without the written consent of all holders of registered mortgages.
	Article 10 Obligation of States to provide notice of forced sales.
	Article 11 Obligation of States to record changes in registration.
International Convention on Maritime Liens and Mortgages, 1993 (not yet in force)	*Article 2* Obligation of States to determine ranking of registered mortgages.
	Article 3 Obligation of States not to permit the owner to de-register the vessel unless all registered mortgages, "*hypothèques*" or charges are previously deleted or the written consent of all holders of such mortgages, "*hypothèques*" or charges is obtained.
	Article 11 Obligation of States to provide notice of forced sales.
	Article 16 Obligation of States to prevent vessels registered in a State to temporarily fly the flag of another State unless all registered mortgages, "*hypothèques*" or charges on that vessel have been previously satisfied or the written consent of the holders of all such mortgages, "*hypothèques*" or charges has been obtained.
International Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels, 1910	*See applicable provisions*

Section 18
Maritime security and crimes at sea

International instrument	*Relevant provision(s)*
Global instruments	
Convention on the High Seas, 1958	*Article 13* Obligation of a State to adopt effective measures to prevent and punish slave transport in ships flying the flag of that State.
	Article 14 Obligation of a State to cooperate in the repression of piracy.
	Article 27 Obligation of a State to make breaking of submarine cable by vessel flying the flag of that State a punishable offence under its domestic law.
UNCLOS	*Articles 94(1), 94(3), 94(6), 94(7), 99, 100, 108, 109, 113*
Convention for the Protection of Submarine Telegraph Cables, 1884	*Article 2* State to make breaking of submarine cable a punishable offence under its domestic law.
Slavery Convention, 1926, as amended by the Protocol Amending the Slavery Convention, 1953	*Article 3* State to undertake the adoption of appropriate measures to prevent and suppress embarkation, disembarkation and transport of slaves upon a vessel flying the flag of that State.
	Article 4 Obligation of a State to give assistance to other States Parties with the object of securing the abolition of slavery and the slave trade.
	Article 6 Obligation of a State to make offences punishable under domestic law.
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956	*Article 3(1)* Obligation of a State to make the slave trade a punishable offence under its domestic law.
	Article 3(2) Obligation of a State to prevent vessels flying the flag of that State from conveying slaves.
Single Convention on Narcotic Drugs, 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs, 1975	*Article 32* Obligation of a State to adopt safeguards to prevent the improper use or diversion for illegal purposes of substances to be used for first-aid or emergency purposes on board a vessel flying the flag of that State.
Convention on Psychotropic Substances, 1971	*Article 14* Obligation of a State to adopt safeguards to prevent the improper use or diversion for illegal purposes of substances to be used for first-aid or emergency purposes on board a vessel flying the flag of that State.

International instrument	*Relevant provision(s)*
United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988	*Article 4* Obligation of a State to establish its jurisdiction if a crime has been committed on board a vessel flying the flag of that State.
	Article 17 Obligation of a State to cooperate to suppress illicit traffic at sea.
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988	*Article 6* Obligation of a State to establish jurisdiction if an offence has been committed on board a vessel flying the flag of that State.
	Article 8(2) Obligation of a State to ensure that the master of its ship is obliged to give notification to authorities of another State Party of his intention to deliver a person he has reasonable grounds to believe has committed an offence.
	Article 8(4) Obligation of a State to ensure that the master of its ship is obliged to furnish authorities of the receiving State with evidence in this respect.
SOLAS 1974, as amended. (chapter XI-1 in particular)	*Regulation 5(8)* Obligation of a State to transmit a continuous synopsis record of a vessel formerly flying the flag of that State to the Administration of the receiving State.
	Regulation 3 Obligation of State to set security levels and provide relevant information to vessels flying the flag of that State.
	Regulation 13 Obligation of a State to communicate information to IMO and to the shipping and port industries.
International Ship and Port Facility Security Code, 2002 (ISPS Code)	*Article 4* Obligation of a State to set security levels and provide guidance for protection from security incidents.
	Article 5 Obligation of a State to undertake risk assessment regarding ship/port interface or ship-to-ship activity.
	also Obligation of a State to approve the ship security plan; to verify compliance of vessels flying the flag of that State with SOLAS part XI and ISPS Part A, to exercise control and compliance measures; to test approved plans; to transmit relevant documents of a vessel formerly flying the flag of that State to the Administration of the receiving State; and to communicate information to IMO and to the shipping and port industries.

International instrument	*Relevant provision(s)*
International Convention for the Suppression of the Financing of Terrorism, 1999	*Article 4* Obligation of a State to make offences punishable under its domestic law.
	Article 7 Obligation of a State to establish its jurisdiction if an offence has been committed on board a vessel flying the flag of that State.
	Article 18 Obligation of a State to cooperate in the prevention of offences
International Convention for the Suppression of Terrorist Bombings, 1997	*Article 4* Obligation of a State to make offences punishable under its domestic law.
	Article 6 Obligation of a State to establish its jurisdiction if a crime has been committed on board a vessel flying the flag of that State.
	Article 15 Obligation of a State to cooperate in the prevention of offences.
International Convention against the Taking of Hostages, 1979	*Article 2* Obligation of a State to make offences punishable under its domestic law.
	Article 4 Obligation of a State to cooperate in the prevention of offences.
	Article 5 Obligation of a State to establish its jurisdiction if a crime has been committed on board a vessel registered in that State.
Convention on the Physical Protection of Nuclear Material, 1980	*Article 3* Obligation of a State to take appropriate steps to ensure the protection of nuclear material on board a vessel flying the flag of that State.
	Article 8 Obligation of a State to establish its jurisdiction if an offence has been committed on board a vessel registered in that State.
United Nations Convention against Transnational Organized Crime, 2000	*Article 11* Obligation of a State to make offences punishable under its domestic law.
	Article 15 Obligation of a State to establish its jurisdiction if an offence has been committed on board a vessel flying the flag of that State.
Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (not yet in force)	*Article 6* Obligation of a State to make offences punishable under its domestic law.
	Article 7 Obligation of States to cooperate to suppress the smuggling of migrants.
	Article 8(4) Obligation of a State to respond expeditiously to a request to confirm registry.

International instrument	*Relevant provision(s)*
	Article 8(6) Obligation of a State to designate an authority to receive and respond to a request such as for confirmation of nationality or requests for boarding.
Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, 2001 (not yet in force)	*Article 6* Obligation of a State to enable confiscation of listed items under its domestic law.
	Article 10 Obligation of a State to establish a licensing system and only authorize export under listed conditions.
	Article 13 Obligation of a State to cooperate in preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms.
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (not yet in force)	*Article 9* Obligation of a State to establish measures to prevent and combat trafficking in persons.
	Article 11 Obligation of a State, where appropriate, to establish the obligation of commercial carriers to ascertain that all passengers are in possession of travel documents required for entry in the receiving State.
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950	*Articles 1-5* Obligation of a State to make offences punishable under its domestic law.
	Article 17 Obligation of States to draw up necessary regulations for the protection of immigrants and emigrants en route and to take appropriate measures to ensure supervision en route to prevent traffic in persons for the purpose of prostitution.
Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973	*Article 2* Obligation of a State to make offences punishable under its domestic law.
	Article 3 Obligation of a State to establish its jurisdiction if a crime has been committed on board a vessel registered in that State.
	Article 4 Obligation of a State to cooperate in preventing offences.
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984	*Article 4(1)* Obligation of a State to ensure that all acts of torture are offences under its domestic criminal law.
	Article 4(2) Obligation of a State to make these offences punishable under domestic law.

International instrument	*Relevant provision(s)*
	Article 5(1) Obligation of a State to take such measures as may be necessary to establish its jurisdiction over the offences committed on ships flying the flag of that State.
International Convention relating to Stowaways, 1957 (not yet in force)	*Article 3* Obligation of a State to accept stowaways found on a vessel flying the flag of that State if other solutions prescribed in the Convention cannot be found.
Convention on the Facilitation of International Maritime Traffic, 1965 (2002 amendments) (chapter 4 in particular)	*Regulation 4.2* Obligation of a State to cooperate in preventing and resolving stowaway incidents and ensuring that early return or repatriation will take place. *Regulation 4.3.2.1* Obligation of a State to require shipowners and masters to have security arrangements to prevent stowaways from getting on board. *Regulation 4.3.2.3* Obligation of a State to require vessels flying the flag of that State, except passenger ships, to undergo thorough search at ports with high risk of stowaway embarkation. *Regulation 4.4.2* Obligation of a State to require masters of vessels flying the flag of that State to ensure the security, health, welfare and safety of stowaways while on board. *Regulation 4.6.1* Obligation of a State to require masters of vessels flying the flag of that State to establish the identity of a stowaway, the port of embarkation and to notify the next port of call. *Regulation 4.6.3* Obligation of a State to require masters of vessels flying the flag of that State to treat as confidential if necessary information about a stowaway declaring himself as a refugee. *Regulation 4.8* Obligation of a State to urge shipowners operating ships flying the flag of that State to instruct their masters not to deviate from a voyage planned for disembarking a stowaway unless a listed exception applies.

International instrument	*Relevant provision(s)*
	Regulation 4.13.1 Obligation of a State to assist and cooperate with the master/owner of a vessel flying the flag of that State in identifying a stowaway, making representations to other States to assist in the removal of the stowaway from vessel at the first opportunity, and in arranging the removal and repatriation of the stowaway.
Regional instruments	
European Agreement for the Prevention of Broadcasts transmitted from Stations Outside National Territories, 1965	*Article 2* Obligation of a State to undertake appropriate steps to make offences punishable under its domestic law.
	Article 3 Obligation of a State to apply provisions of the Agreement to persons on that State's vessels.
Convention on the Protection of the Environment through Criminal Law, 1998 (not yet in force)	*Articles 2, 3, 4, 6* Obligation of a State to make offences punishable under its domestic law.
	Article 5 Obligation of a State to establish its jurisdiction if an offence has been committed on board a vessel registered in that State or flying the flag of that State.
	Article 7 Obligation of a State to adopt measures as may be necessary to enable confiscation of instrumentalities and proceeds, or property the value of which corresponds to such proceeds, in respect of offences.
	Article 9 Obligation of a State to adopt measures as may be necessary to enable imposition of criminal or administrative sanctions or measures on legal persons on whose behalf an offence has been committed by their organs or by members thereof or by another representative.
	Article 12 Obligation of a State to afford the widest measure of cooperation in investigations and judicial proceedings relating to criminal offences.
Agreement on Illicit Traffic by Sea, Implementing Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1994	*Article 2* Obligation of a State to cooperate to suppress illicit traffic in drugs.
	Article 3 Obligation of a State to establish jurisdiction if an offence has been committed on board a vessel flying the flag of that State.
	Article 14 Obligation of a State to give notification if it wishes to exercise preferential jurisdiction over ships flying the flag of that State in cases of prior authorization of another State to undertake enforcement measures.

International instrument	*Relevant provision(s)*
	Article 17 Obligation of a State to designate an authority responsible for answering request for confirmation of nationality or for authorization to board vessels flying the flag of that State.
	Article 22 Obligation of a State to inform masters and owners of vessels flying the flag of that State of the possibility of non-nationals boarding.
Agreement concerning Cooperation in Suppressing Illicit Maritime and Air Trafficking in Narcotic Drugs and Psychotropic Substances in the Caribbean Area, 2003 (not yet in force)	*Article 2* Obligation of a State to cooperate in combating illicit traffic in and over the waters of the Caribbean area.
	Article 16(1) Obligation of a State to accept the boarding of vessels flying the flag of that State by other States Parties unless para. 2 or para. 3 applies.
	Article 23 Obligation of a State to establish its jurisdiction if an offence has been committed on board a vessel flying the flag of that State.
Inter-American Convention Against the Illicit Manufacture and Traffic in Weapons, Munitions, Explosives and Related Materials, 1997	*Article 9* Obligation of a State to establish a licensing system for trade in firearms and to ensure that the necessary licences by other States are issued before authorizing shipment.
	Article 13 Obligation of a State to cooperate in tracing firearms illicitly trafficked.
South Asian Association for Regional Cooperation (SAARC) Convention on Narcotic Drugs and Psychotropic Substances, 1990	*Article 3* Obligation of a State to make offences punishable under its domestic law.
	Article 5 Obligation of a State to establish jurisdiction if an offence has been committed on board a vessel flying the flag of that State.
	Article 7 Obligation of a State to extradite or prosecute.
	Article 13 Obligation of a State to cooperate in suppressing the commission of offences.
(Inter-American) Convention against Terrorism, 2002	*Article 1* State to adopt necessary measures to strengthen cooperation to prevent, punish and eliminate terrorism.
	Article 2 For the purpose of the Convention, "offences" means offences established, inter alia, in the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988.
	Article 4 Obligation of a State to institute a legal and regulatory regime to prevent, combat and eradicate the financing of terrorism and for effective international cooperation in respect thereto.

International instrument	*Relevant provision(s)*
Organization of African Unity (OAU) Convention on the Prevention and Combating of Terrorism, 1999	*Article 2* States to undertake to make offences punishable under domestic law.
	Article 4 Obligation of States to adopt any legitimate measure aimed at preventing and combating terrorism.
	Article 5 Obligation of a State to cooperate in preventing and combating terrorism.
	Article 6 State to establish jurisdiction over vessels flying the flag of that State.
Convention of the Organization of the Islamic Conference on Combating International Terrorism, 1999 (not yet in force)	*Article 1(4)* Crimes stipulated in the United Nations Law of the Sea Convention and its related provisions on piracy at sea, and crimes stipulated in the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation are, inter alia, also considered terrorist crimes.
	Article 2(d) Provides that all forms of international crimes, including illegal trafficking in narcotics and human beings and money-laundering aimed at financing terrorist objectives, shall be considered terrorist crimes.
	Article 3(II) States to be committed to prevent and combat terrorist crimes, inter alia, obligation of a State to see to developing and strengthening systems related to surveillance procedures, securing borders, and land, sea and air passages in order to prevent infiltration through them.
	Article 4 Obligation of a State to cooperate among Contracting States in preventing and combating terrorism.
Arab Convention on the Suppression of Terrorism, 1998	*Article 1* The provisions of the United Nations Convention on the Law of the Sea, of 1982, relating to piracy on the high seas shall, inter alia, also be regarded as terrorist offences.
	Article 4 Obligation of a State to cooperate in the prevention and suppression of terrorist offences.

Section 19
Conservation and management of living marine resources

International instrument	*Relevant provision(s)*
UNCLOS	*Articles 61(5), 62(4), 63(2), 64, 65, 66(3)(a), 117, 118, 119(1)(a) and (b); 119(2)*
Convention on Fishing and Conservation of the Living Resources of the High Seas, 1958	*Article 3* Obligation of States to adopt, for vessels flying their flags, measures for the conservation of the living resources affected. *Article 4* Obligation of States to enter into negotiations with a view to prescribing by agreement, for vessels flying their flags, the necessary measures for the conservation of living resources (in case two or more States are engaged in fishing the same stock on any area of the high seas).
Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995	*See table B*
Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993	*See below*

Article III(1)(a) Obligation of States to take such measures as may be necessary to ensure that fishing vessels entitled to fly their flag do not engage in any activity that undermines the effectiveness of international conservation and management measures.

(b) In the event that a State Party has, pursuant to paragraph 2 of article II, granted an exemption for fishing vessels of less than 24 metres in length entitled to fly its flag from the application of other provisions of this Agreement, such State Party shall nevertheless take effective measures in respect of any such fishing vessel that undermines the effectiveness of international conservation and management measures. These measures shall be such as to ensure that the fishing vessel ceases to engage in activities that undermine the effectiveness of the international conservation and management measures.

Article III(2) Obligation of States not to allow any fishing vessel entitled to fly their flag to be used for fishing on the high seas unless it has been authorized to be so used by the appropriate authority or authorities of that State. A fishing vessel so authorized shall fish in accordance with the conditions of the authorization.

Article III(3) Obligation of States not to authorize any fishing vessel entitled to fly their flag to be used for fishing on the high seas unless the flag State is satisfied that it is able, taking into account the links that exist between it and the fishing vessel concerned, to exercise effectively its responsibilities under this Agreement in respect of that fishing vessel.

Article III(4) Where a fishing vessel that has been authorized to be used for fishing on the high seas by a Party ceases to be entitled to fly the flag of that Party, the authorization to fish on the high seas shall be deemed to have been cancelled.

Article III(5)(a) Obligation of States not to authorize any fishing vessel previously registered in the territory of another State that has undermined the effectiveness of international conservation and management measures to be used for fishing on the high seas, unless it is satisfied that:

(i) Any period of suspension by another Party of an authorization for such fishing vessel to be used for fishing on the high seas has expired; and

(ii) No authorization for such fishing vessel to be used for fishing on the high seas has been withdrawn by another Party within the last three years;

(b) The provisions of subparagraph (a) above shall also apply in respect of fishing vessels previously registered in the territory of a State which is not a party to the Agreement, provided that sufficient information is available to the Party concerned on the circumstances in which the authorization to fish was suspended or withdrawn.

Article III(6) Obligation of States to ensure that all fishing vessels entitled to fly their flag that they have entered in the record maintained under article IV are marked in such a way that they can be readily identified in accordance with generally accepted standards, such as the FAO Standard Specifications for the Marking and Identification of Fishing Vessels.

Article III(7) Obligation of States to ensure that each fishing vessel entitled to fly their flag provides it with such information on its operations as may be necessary to enable States to fulfil their obligations under the Agreement, including in particular information pertaining to the area of their fishing operations and to their catches and landings.

Article III(8) Obligation of States to take enforcement measures in respect of fishing vessels entitled to fly their flag which act in contravention of the provisions of the Agreement, including, where appropriate, making the contravention of such provisions an offence under their national legislation. Sanctions applicable in respect of such contraventions shall be of sufficient gravity as to be effective in securing compliance with the requirements of the Agreement and to deprive offenders of the benefits accruing from their illegal activities. Such sanctions shall, for serious offences, include refusal, suspension or withdrawal of the authorization to fish on the high seas.

Article (IV) Obligation of States, for the purposes of the Agreement, to maintain a record of fishing vessels entitled to fly their flag and authorized to be used for fishing on the high seas, and to take such measures as may be necessary to ensure that all such fishing vessels are entered in that record.

Article VI(1) Obligation of States to make readily available to FAO the following information with respect to each fishing vessel entered in the record required to be maintained under article IV:

(a) Name of fishing vessel, registration number, previous names (if known), and port of registry;

(b) Previous flag (if any);

(c) International Radio Call Sign (if any);

(d) Name and address of owner or owners;

(e) Where and when built;

(f) Type of vessel;

(g) Length.

International instrument	*Relevant provision(s)*

Article VI(2) Obligation of States, to the extent practicable, to make available to FAO the following additional information with respect to each fishing vessel entered in the record required to be maintained under article IV:

(a) Name and address of operator (manager) or operators (managers) (if any);

(b) Type of fishing method or methods;

(c) Moulded depth;

(d) Beam;

(e) Gross register tonnage;

(f) Power of main engine or engines.

Article VI(3) Obligation of States to promptly notify to FAO any modifications to the information listed in paragraphs 1 and 2 of article VI.

Article VI(5) Obligation of States to promptly inform FAO of:

(a) Any additions to the record;

(b) Any deletions from the record by reason of:

(i) The voluntary relinquishment or non-renewal of the fishing authorization by the fishing vessel owner or operator;

(ii) The withdrawal of the fishing authorization issued in respect of the fishing vessel under paragraph 8 of article III;

(iii) The fact that the fishing vessel concerned is no longer entitled to fly its flag;

(iv) The scrapping, decommissioning or loss of the fishing vessel concerned; or

(v) Any other reason.

Article VI(6) Where information is given to FAO under paragraph 5 (b) above, obligation of States concerned to specify which of the reasons listed in that paragraph is applicable.

Article VI(8)(a) Obligation of States to report promptly to FAO all relevant information regarding any activities of fishing vessels flying their flag that undermine the effectiveness of international conservation and management measures, including the identity of the fishing vessel or vessels involved and measures imposed by it in respect of such activities.

Article VI(9) Obligation of States to inform FAO of any cases where, pursuant to paragraph 5 (d) of article III, it has granted an authorization notwithstanding the provisions of paragraph 5 (a) or 5 (b) of article III. The information shall include pertinent data permitting the identification of the fishing vessel and the owner or operator and, as appropriate, any other information relevant to the State's decision.

Section 20
International humanitarian conventions and international human rights instruments

International instrument	*Relevant provision(s)*
Global instruments	
Universal Declaration of Human Rights, 1948	*Article 4* Right of individual not to be held in slavery; slavery and the slave trade shall be prohibited in all their forms.
	Article 5 Right of individual not to be subject to cruel, inhuman or degrading treatment.
International Covenant on Civil and Political Rights, 1966 (not clear if it applies to individuals in vessels)	*Article 2* State to undertake to respect and to ensure rights recognized in Covenant, without distinction of any kind, inter alia:
	Article 7 No one to be subjected to cruel, inhuman or degrading treatment.
	Article 8 No one is to be held in slavery; slavery and the slave trade in all their forms shall be prohibited.
	Article 3 States to undertake to ensure equal rights of men and women.
International Covenant on Economic, Social and Cultural Rights, 1966	*Article 2(2)* State to undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law.
	Article 3 State to undertake to ensure equal rights of men and women as set forth in the Covenant.
	Article 10 State to recognize that children and young persons should be protected from economic and social exploitation. Employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law.
International Convention on the Elimination of All Forms of Racial Discrimination, 1965	*Article 5* States to undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law.

International instrument	*Relevant provision(s)*
	Article 6 Obligation of States to assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination.
Convention on the Rights of the Child, 1990	*Article 2(1)* Obligation of States to respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind.
	Article 2(2) Obligation of a State to take all appropriate measures to ensure that the child is protected against all forms of discrimination.
	Article 4 Obligation of a State to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the Convention.
	Article 11 Obligation of a State to take measures to combat the illicit transfer and non-return of children abroad.
	Article 19 Obligation of a State to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.
	Article 37 Obligation of a State to ensure no child is subjected to cruel, inhuman or degrading treatment or punishment.
Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (ILO No. 182)	*Articles 1, 3* Obligation of a State to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour, inter alia, all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour
	Article 17 Obligation of a State to take effective and time-bound measures to prevent the engagement of children in the worst forms of child labour.
Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981	*Article 4* Obligation of a State to take effective measures to prevent and eliminate discrimination on grounds of religion or belief.

International instrument	*Relevant provision(s)*
Convention relating to the Status of Refugees, 1951	*Article 3* Obligation of a State to apply the provisions of the Convention to refugees without discrimination.
	Article 11 Obligation of a State to consider establishment on its territory of refugees regularly serving as crew members on board a vessel flying the flag of that State; or their temporary admission thereto; and the issue of travel documents to them.
Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live, 1985	*Article 6* State to ensure nobody is subject to cruel, inhuman or degrading treatment.
Regional instruments	
African Charter on Human and Peoples' Rights (Banjul Charter), 1981	*Article 1* Obligation of a State to recognize the rights enshrined in chapter I and obligation to adopt legislative or other measures to give effect to them, inter alia:
	Article 2 Right of the individual to enjoy rights and freedoms recognized in Charter without distinction of any kind.
	Article 5 Obligation of a State to prohibit all forms of exploitation and degradation of man, particularly slavery, the slave trade and degrading treatment.
	Article 16 Obligation of States to take the necessary measures to protect the health of their people.
African Charter on the Rights and Welfare of the Child, 1990	*Article 1* Obligation of a State to recognize the rights, freedoms and duties enshrined in the Charter and to undertake the necessary steps to adopt legislative or other measures as may be necessary to give effect to provisions of the Charter, inter alia, in respect of:
	Article 14 Right of every child to enjoy the best attainable state of physical, mental and spiritual health.
	Article 15 Every child to be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral or social development.

International instrument	*Relevant provision(s)*
	Article 16 Obligation of a State to take specific legislative, administrative, social and educational measures to protect the child from all forms of inhuman or degrading treatment (not clear if it applies to individuals in vessels).
Arab Charter on Human Rights, 1994 (not yet in force)	*Article 2* State to undertake to ensure right of the individual to enjoy rights and freedoms recognized in the Charter without distinction of any kind.
	Article 13 Obligation of States to protect every person in their territory from being subjected to physical or mental torture or cruel, inhuman or degrading treatment (not clear if it applies to individuals in vessels).
American Convention on Human Rights (Pact of San José), 1969	*Article 1* States to undertake to respect the rights and freedoms recognized in the Convention and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination.
	Article 2 States to undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.
	Article 5 Right of the individual not to be subjected to cruel, inhuman or degrading treatment.
	Article 6 Right of the individual not to be subject to slavery, which is prohibited in all its forms, as are the slave trade and traffic in women.
European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, as amended by Protocol No. 11, 1988	*Article 1* Obligation of States to secure to everyone within their jurisdiction the rights and freedoms defined in section I of Convention, inter alia:
	Article 3 No one to be subjected to inhuman or degrading treatment or punishment.
	Article 4 No one to be held in slavery or servitude.
	Article 14 Obligation of a State to secure non-discrimination in enjoyment of rights.

IV. Conclusions

210. The contributions of IMO, FAO and ILO describe the large number of treaties, codes, recommendations and guidelines that those organizations have adopted to assist and improve flag States' implementation of their obligations in the areas of safety and pollution prevention in merchant shipping and the prevention of IUU fishing and to establish labour conditions on board merchant ships and fishing vessels. In addition, FAO and ILO have commissioned studies and convened special meetings on the relevant issues. UNEP has taken certain measures with respect to pollution prevention and emergency response. In relation to merchant shipping, port State control has helped to improve implementation of existing standards. However, all interested parties recognize that port State control is not a substitute for flag State implementation and enforcement, as flag States have the primary responsibility for the effective enforcement of standards on board their ships.

211. The Voluntary IMO Member State Audit Scheme aims to help promote maritime safety and environmental protection by assessing how effectively member States implement and enforce relevant IMO Convention standards and by providing them with feedback and advice on their current performance. Another initiative is the proposal for including "performance clauses" in IMO Conventions, giving IMO the authority to verify whether flag States do in fact implement the Conventions, with the possibility of penalties if they do not. While ILO already has some supervisory authority under its Constitution, this does not appear to be effective in ensuring flag State implementation. For this reason, stronger provisions are planned for the new consolidated Convention on labour standards in merchant ships and the planned comprehensive standard on work in the fishing sector, including an increased focus on port State control. To complete the provisions of its Compliance Agreement and its Code of Conduct for Responsible Fisheries, FAO is also considering port State measures as one possible solution to the problem of inadequate flag State control and IUU fishing.

212. There are many reasons for the persistence of inadequate flag State control, ranging from the lack of human, technical and financial resources, through the practical difficulties of administering ships operating internationally, to insufficient political weight given to the importance of flag State responsibilities and the obligation of flag States to give full effect to treaty instruments to which they are party. However, the considerable majority of national administrations take seriously and responsibly their obligations as flag States. Evidently, some do not.

213. UNCTAD sees so-called "flags of convenience" as the major problem, although it realizes that some "traditional" flags can also be lax in enforcing international requirements. Focusing on the flags of convenience issue, UNCTAD regrets the failure of the 1986 United Nations Convention on Conditions for Registration of Ships, which attempted to provide minimum requirements for a "genuine link" between a ship and the State in which it is registered. From its perspective, an economic and legal link between the flag State and its ships is essential to ensure proper enforcement.

214. OECD adopts another approach, focusing on other actors apart from flag States as a means to eliminate sub-standard shipping. While some port States offer incentives for quality shipping such as reduced port dues and reduced inspection frequencies, they are not widespread and OECD believes that more is required. As

demonstrated by a series of research studies, existing incentives and disincentives seem insufficient, for the shipping industry does not seem to lose anything by the continued existence of sub-standard shipping. Quite the contrary: in many cases, financial advantages resulting from the non-implementation of safety and anti-pollution requirements are compounded by minimal enforcement by flag States, lack of prosecution and imposition of fines in an amount usually less than the money saved by violating regulations. Furthermore, liability is limited and insurers pay for everything, including fines. Moreover, the real shipowner can conceal his identify through complicated corporate structures and can limit his losses through one-ship companies. With respect to pollution damage, in most cases, the other parties involved are not liable. OECD recommends enforcing regulations vigorously, imposing higher fines, promoting greater transparency in exposing sub-standard vessels and their owners, and involving other actors besides shipowners, as well as increasing the costs of non-compliance and providing incentives for quality shipping.

215. What is to be done? The challenge is to ensure that States establish an effective and structured maritime administration in order to comply with the duties of the flag State prescribed in article 94 of UNCLOS. This is the basic idea behind paragraph 27 of General Assembly resolution 58/240 as well as provisions in the FAO Compliance Agreement and Code of Conduct, which stipulate in essence that States should not register vessels if they are unable to carry out their responsibilities. IMO addresses the challenge in a number of non-binding documents, such as the Guidelines to Assist Flag States in the Implementation of IMO Instruments and the draft Implementation Code, which require flag States to exercise effective control over their ships and to maintain the means to do so.

Solutions

216. IMO instruments set out a wide range of flag State obligations including, in some cases, provisions requiring parties to prescribe and enforce penalties or disciplinary measures. At present the Voluntary IMO Member State Audit Scheme does not provide for penalties. However, the new scheme will allow IMO to verify implementation and, as it is being developed in such a manner as not to exclude the future possibility of its being made mandatory, it may in future do much to address the issue of inadequate implementation of international standards on merchant ships.

217. With respect to fishing vessels, there are already relevant legally binding obligations, but FAO has no oversight authority. However, it is possible that a combination of mutual enforcement as established in the United Nations Fish Stocks Agreement, port State measures and trade measures could substitute for a lack of flag State control. Moreover, an important new legal consequence has been introduced in relation to straddling fish stocks and highly migratory fish stocks in the United Nations Fish Stocks Agreement, which provides the possibility of legal proceedings under Part V of UNCLOS by one State against another in the event of a violation of the rules and principles, not only of the Agreement itself, but also of any other fisheries agreement to which the States concerned are parties relating to the same fish stocks.

218. With respect to ILO instruments concerning labour conditions and the welfare of seafarers, in addition to a requirement for States to report on implementation and

provisions for scrutiny by experts and a conference committee, there is the possibility for a complaint by a State or a delegate to lead to a Commission of Inquiry and eventually to a decision of the International Court of Justice.

219. Finally, States parties to UNCLOS dissatisfied with the performance of a flag State that appears not to have fulfilled its obligations under UNCLOS could make use of Part XV to seek compulsory and binding third-party dispute settlement before the International Tribunal for the Law of the Sea, the International Court of Justice, or general or specialized ad hoc tribunals. Yet despite a fairly high level of dissatisfaction among some States at the deficiencies in the performance of some other States, there has been no rush to litigation to rectify the problems adumbrated in the various contributions to the present report. Although a Tribunal decision that appeared to restrict the possibilities for Part XV proceedings may have caused some States to hesitate, the most likely reason for the lack of litigation is an extreme reluctance of States to challenge each other in adversarial cases in court, coupled with the high cost of doing so. Thus it appears that the rather remote prospect of litigation is not sufficient to induce recalcitrant flag States to honour their international legal obligations. Nevertheless, there is some evidence in fishing cases[80] that the actual commencement of litigation may provide an incentive to States to come to a negotiated settlement.

220. In conclusion, there is a need to strengthen international action to ensure that all States, through effective exercise of their prescriptive and enforcement jurisdiction, ensure that ships flying their flag comply with international rules aimed at securing maritime safety and the prevention of marine pollution, as well as the welfare of seafarers on board. Non-compliance by States with binding international rules can be only partially corrected through diplomatic pressure, adverse publicity or countermeasures authorized by international law. Litigation at the international level is only possible with consent, and in any case is rare.

221. The exercise of port State control as a remedy, however useful, cannot effectively counteract the failure of flag States to meet their obligations under international law. Full compliance with international rules and standards can only be ensured through appropriate action of the flag State concerned and an adequate system of sanctions which primarily relies upon flag States. In this regard, it should be recalled that the duty to adopt legislation on sanctions for violations of international rules is explicitly referred to in several IMO Conventions as an obligation to be fulfilled by States parties through the maritime administrations of flag States. The duty to ensure the conformity of ships having their nationality with international requirements and to impose sanctions for violations is also explicitly referred to in most relevant treaties adopted in other fields by other international organizations.

Notes

[1] Organization for Economic Cooperation and Development (OECD), *Cost Saving Stemming from Non-Compliance with International Environmental Regulations in the Maritime Sector*, DSTI/DOT/MTC(2000)8/Final, available at www.oecd.org/dataoecd/4/26/2496757.pdf.

[2] The text of these instruments may be accessed on the web site of the organization, at www.fao.org.

[3] FAO Conference resolution 15/93.

[4] Compliance Agreement, art. II.1.

[5] The key provisions are contained in article III.

[6] Compliance Agreement, art. III.1.

[7] Ibid.

[8] Ibid., art. III.2.

[9] Ibid., art. III.3.

[10] Ibid., art. IV.

[11] Ibid., art. III.2.

[12] Ibid., art. III.4.

[13] Ibid., art. III.5.

[14] Ibid., art. III.6.

[15] Ibid., art. III.7.

[16] Ibid., art. III.8.

[17] Ibid.

[18] Ibid., art. V.

[19] Ibid., art. VI.

[20] Ibid.

[21] FAO Conference resolution 4/95.

[22] Annex 2 to the Code of Conduct.

[23] Report of the 24th Session of the Committee on Fisheries, FAO headquarters, Rome, 26 February-2 March 2001, concerning the progress report on the Code of Conduct for Responsible Fisheries and related international plans of action; D. J. Doulman, Code of Conduct for Responsible Fisheries: Development and Implementation Considerations (FAO, July 2000). See also www.fao.org/fi/agreem/codecond/codecon.asp.

[24] Code of Conduct, art. 8.2.2.

[25] Ibid., art. 8.2.1.

[26] Ibid., arts. 8.2.3 and 8.2.4.

[27] Ibid., art. 8.2.6.

[28] Ibid., art. 8.2.7.

[29] Ibid., art. 8.2.5.

[30] Ibid., art. 8.2.8.

[31] Ibid., art. 8.2.9.

[32] IPOA-Capacity, art. 33.

[33] IPOA-IUU was endorsed on 23 June 2001 by the FAO Council at its 120th session.

[34] IPOA-IUU, Part I, para. 1.

[35] Ibid., paras. 4 and 5, and FAO Code of Conduct, art. IV. It follows other IPOAs on seabirds, on sharks, and on capacity which were also developed in compliance with the Code of Conduct, adopted by COFI at its twenty-third session in February 1999 and endorsed by the FAO Council in November 2000.

[36] In particular articles 1.1, 1.2, 3.1, and 3.2.

[37] IPOA-IUU, para. 87.

[38] Ibid., Part III, para. 8.

[39] Ibid., paras. 18 and 19.

[40] For example, for the case of coastal States, an example is paragraph 51.4 of IPOA-IUU, where the coastal State is able to check that flag States are maintaining the records of vessels provided for in paragraph 42. Similarly, the second sentence of paragraph 45 provides for a coastal State to check that the flag State has issued an authorization to fish. This provision in turn links back to paragraph 41, where the flag State is encouraged to ensure that where its vessels fish in waters under the jurisdiction of another State, that coastal State has issued an authorization to fish. For the case of port States, paragraph 55 of IPOA-IUU provides for the port State to check the authorization to fish before allowing port access. States and RFMOs are encouraged to report to FAO on progress in implementing IPOA-IUU as part of their biennial reporting on the Code of Conduct (para. 87).

[41] 17 of 93 paragraphs — almost 20 per cent.

[42] IPOA-IUU paras. 34-41.

[43] Ibid., paras. 42-43.

[44] Ibid., paras. 44-50.

[45] Ibid., paras. 34, 35.

[46] Compliance Agreement, art. III.5.

[47] IPOA-IUU, para. 36.

[48] Ibid., para. 37.

[49] Ibid., para. 39.

[50] See European Parliament Committee on Fisheries, Report on the role of flags of convenience in the fisheries sector, 20 November 2001; rapporteur Patricia McKenna.

[51] IPOA-IUU, paras. 38 and 39.

[52] Ibid., para. 38.

[53] Ibid., para. 40.

[54] Ibid., para. 41.

[55] Ibid., para. 42.

[56] Ibid.

[57] Ibid., para. 44.

[58] Ibid., para. 45.

[59] Ibid., para. 46.

[60] Ibid., para. 47.

[61] Ibid., para. 48.

[62] Ibid., paras. 49 and 50.

[63] "Report of the Joint FAO/IMO Ad Hoc Working Group on Illegal, Unreported and Unregulated Fishing and Related Matters", Rome, 9-11 October 2000. FAO Fisheries Report No. 637.

[64] "Port State control of foreign fishing vessels", by Terje Lobach (International Legal Consultant). FAO Fisheries Circular No. 987, 2003; "Report of the Expert Consultation to Review Port State Measures to Combat Illegal, Unreported and Unregulated Fishing", Rome, 4-6 November 2002 FAO Fisheries Report No. 692.

[65] The report of that meeting will be made available shortly.

[66] See www.ilo.org/public/english/dialogue/sector/sectors/mariti/standards.htm#heading1a.

[67] UNCTAD report of the Ad Hoc Intergovernmental Working Group on the Economic Consequences of the Existence of Lack of a Genuine Link between Vessel and Flag of Registry, TD/B/C.4/177.

[68] www.oecd.org/dataoecd/53/9/2500758.pdf.

[69] www.oecd.org/dataoecd/4/26/2496757.pdf.

[70] www.oecd.org/dataoecd/32/62/2489394.pdf.

[71] DSTI/DOT/MTC(2001)12.

[72] www.oecd.org/dataoecd/27/18/1827388.pdf.

[73] http://intradomino.oecd.org/olis/1998doc.nsf/ed2843f7a67f3d4ac12565060004ab473/4c08a29348b4573bc125663b004acb18/$FILE/07E84346.ENG.

[74] www.oecd.org/dataoecd/10/10/2754615.pdf.

[75] For the purposes of this Policy Statement, a "sub-standard ship" is regarded as a vessel that, through its physical condition, its operation or the activities of its crew, fails to meet basic standards of seaworthiness and thereby poses a threat to life and/or the environment. This would be evidenced by the failure of the vessel to meet regulations contained in international maritime conventions to the extent that it would be considered unfit to sail by a reasonable flag State or port State inspection.

[76] Article 209, paragraph 1, reads: "International rules, regulations and procedures shall be established in accordance with Part XI to prevent, reduce and control pollution of the marine environment from activities in the Area. Such rules, regulations and procedures shall be re-examined from time to time."

[77] Article 21, paragraph 1, reads as follows:

> "In any high seas area covered by a subregional or regional fisheries management organization or arrangement, a State Party which is a member of such organization or a participant in such arrangement may, through its duly authorized inspectors, board and inspect, in accordance with paragraph 2, fishing vessels flying the flag of another State Party to this Agreement, whether or not such State Party is also a member of the organization or a participant in the arrangement, for the purpose of ensuring compliance with conservation and management measures for straddling fish stocks and highly migratory fish stocks established by that organization or arrangement."

[78] The Convention makes reference to "installation State" which may be flag States, although not necessarily.

[79] The aim of the1988 Joint Protocol is to broaden the application of 1960 Paris Convention and 1963 Vienna Convention.

[80] *Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan), Provisional Measures*; Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community).

Annex I

Letter dated 22 November 2002 from Greenpeace International, the International Transport Workers' Federation and the World Wide Fund for Nature addressed to the Secretary-General

The *Prestige* is the latest in a long line of accidents involving oil tankers. It does not just present a grave risk to the marine environment, but is also a symptom of much deeper problems. There is a weekly litany of losses of other types of ships that, sadly, do not attract the same kind of media attention, even though the seafarers on board have died needlessly. Unless the root causes of the problem are addressed, sub-standard ships will continue to sink, threatening lives, the marine and coastal environment, and the economies of affected communities.

Greenpeace, the International Transport Workers' Federation and the World Wide Fund for Nature believe that the only way to tackle this situation is by making urgent and fundamental changes to the way that global shipping is operated and regulated and calling for concerted action to eliminate sub-standard shipping and practices — action that requires that the shipping industry becomes more transparent and accountable, that regulations are made adequate — and, crucially, are enforced — and that attention is paid to protecting particularly vulnerable marine and coastal areas.

Sub-standard ships and shipping practices create a higher than normal risk of serious accidents. Current arrangements can make it almost impossible to identify the real owners of vessels and hold them accountable for the way they maintain and operate their ships, as well as allowing irresponsible industry practices to continue. It is essential that the details of ownership and management of ships be fully transparent and that effective liability arrangements are put in place to ensure that the guilty parties are held responsible for the consequences of poor standards and practices.

The current approach to setting international standards for shipping has tended to be reactive, ponderous and based on industry-driven compromises; the long time scales for phasing out old tankers and improving the safety of bulk carriers are obvious examples.

Even where rules have been agreed internationally, there is a problem in ensuring compliance. Enforcement of shipping regulations relies largely on the actions of flag States, which bear the ultimate responsibility for the safety of the ship and the lives of the seafarers on it. Many flag States take these responsibilities seriously, but there are some, often referred to as flags of convenience, who profit from allowing foreign ship operators to register vessels in their nation's name but fail to effectively monitor and oversee the ships which fly their flag. The flag of convenience system turns ship registration into a business and allows a competitive advantage that encourages sub-standard shipping practices. Article 91 of the United Nations Convention of the Law of the Sea (UNCLOS) establishes that there must be a "genuine link" between the ship and the flag it flies, and this needs to be enforced. International law states that a ship has the nationality of the flag it flies, and this has serious consequences for the crew who live and work on it, not just as regards civil and criminal jurisdiction, but also for the protection of their human and trade union rights.

A new global agreement is required which eliminates the flag of convenience system and ensures that flag States meet their responsibilities, which are clearly established under applicable international law, and are made accountable for the enforcement of internationally agreed regulations.

Even if only quality ships were carrying dangerous and toxic materials, of which oil is only one example, there is a risk of an accident leading to marine pollution. It is also important to identify those marine and coastal areas that are especially at risk from such incidents, for example as Particularly Sensitive Sea Areas, of which only five have been designated since 1991. It is necessary to strictly regulate shipping in these areas and, as permitted under international law and the provisions related to the freedom of innocent passage, exclude the transport of highly polluting substances through them.

Article 94 of UNCLOS sets out the duties of a flag State and requires that all flag States shall effectively exercise jurisdiction and control over administrative, technical, social and labour matters over ships flying their flag, and in doing so, flag States are required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance. There is also a need, while flag States do not meet their obligations under international law, for a further enhancement of the port State control regime, it being understood that port State control is not and never can be a substitute for effective flag State control.

Shipping is the motor of world trade and the globalized economy. The General Assembly in its Millennium Declaration stated:

> "We believe that the central challenge we face today is to ensure that globalization becomes a positive force for all the world's people." (resolution 55/2, para. 5)

Central to this must be responding to the demands of civil society and ensuring that the shipping industry is run on a rational and sustainable basis. There is an urgent need to bring about a fundamental change in the way it is operated and regulated.

This will require a concerted multi-agency approach involving all the international agencies with competence in ocean and seas issues. This will include the International Maritime Organization (IMO), which tends to focus on technical solutions, and the International Labour Organization (ILO), which addresses the social and labour aspects. It would also require that the United Nations Division for Ocean Affairs and the Law of the Sea be invited to revise the United Nations Convention on Conditions for Registration of Ships (1986), which has not entered into force.

However, in order to ensure that this serious situation is addressed, we would request that you take a leadership role and convene a special task force to address these problems in a coordinated manner, which would bring the synergies of the competent international agencies and concerned regional bodies to bear on the matter. We would suggest that this process would be facilitated if it was inclusive and also provided for multi-stakeholder participation.

We look forward to hearing from you.

(*Signed*) Lasse **Gustavsson**
Deputy Political and Science Division Director
Greenpeace International

(*Signed*) David **Cockroft**
General Secretary
International Transport Workers' Federation

(*Signed*) Siân **Pullen**
Head of WWF delegation at IMO
On behalf of Simon Cripps, Director
WWF International Marine Programme

Annex II

Summary of the discussion of the initial informal meeting held at the headquarters of the Organization for Economic Cooperation and Development, Paris, on 7 May 2003

1. The initial informal meeting of the Inter-Agency Consultative Group on Flag State Implementation was hosted by the Organization for Economic Cooperation and Development (OECD) in Paris on 7 May 2003. It was chaired by the United Nations Division for Ocean Affairs and the Law of the Sea. Attending were representatives of the following organizations:

- Food and Agriculture Organization of the United Nations (FAO)
- United Nations Conference on Trade and Development (UNCTAD)
- United Nations Environment Programme (UNEP)
- International Maritime Organization (IMO)
- International Labour Organization (ILO)
- OECD Secretariat (Transport Division, Legal Affairs Division and OECD Round Table on Sustainable Development).

2. The main topic discussed was the draft terms of reference proposed by the United Nations. Questions arose as to: (a) the purpose of the Group; (b) its relation to the mandates/competence of the participating organizations; (c) issues to be considered; and (d) the nature and destination of any final report.

3. Representatives of IMO stated that the issue of inadequate flag State jurisdiction was mainly within the competence of IMO and was being addressed through the Subcommittee on Flag State Implementation and the development of a model audit scheme. However, other participants noted that there had been little progress at IMO on the relevant issues and that it was for that reason that the NGOs had approached the Secretary-General of the United Nations to form the Consultative Group. Furthermore, the question of inadequate flag State implementation extended beyond the limited field of merchant shipping covered by IMO. FAO was concerned about inadequate flag State control of fishing vessels, which was one of the causes of illegal, unregulated and unreported fishing. ILO was concerned about the lack of implementation and enforcement of labour standards by certain flag States, and UNCTAD was concerned about flags of convenience, ship registration and the question of the "genuine link". The United Nations Division for Ocean Affairs and the Law of the Sea was concerned about all these issues and believed that the participants were facing a number of related problems and could learn from each other. OECD urged participants to seek "creative", radical solutions to these problems and not to limit their approach to flag States. Other actors and institutions could be utilized to ensure that ships engaged in any activity conformed to the relevant legal requirements.

4. The Division for Ocean Affairs and the Law of the Sea explained that one of its primary functions was to protect the integrity of the Convention and the careful balance of rights and duties of flag States and coastal States. After the *Prestige* disaster, some States had taken unilateral actions that were not consistent with the Convention and the European Community expressed the wish to amend the

Convention because it believed that coastal States lacked sufficient power to adequately protect their coasts against ship-source pollution. In order to forestall such actions and proposals that might cause the collapse of the Convention regime, it was essential to improve flag State implementation and enforcement.

5. When OECD again challenged the group to engage in some "out-of-box thinking", the representatives of the other organizations responded that they could not go beyond their mandates and could not propose solutions that their memberships would not accept.

6. The Division for Ocean Affairs and the Law of the Sea noted that it was important to reach politicians who did not understand the role of UNCLOS or the complexities of the issues involved. For that reason, one of the purposes of the Consultative Group should be to "educate" decision makers about the international legal framework concerning the rights and duties of flag States and coastal States.

7. Furthermore, even the agencies directly involved with those issues were not always aware of what the other agencies were doing. Most had produced lengthy research reports and were engaged in adopting measures to deal with inadequate flag State implementation. It would be useful to exchange brief summaries of that work. OECD believed that it would be more useful to exchange ideas set out in brief two-page strategies of what could be done to remedy the problems. Those ideas could go beyond a focus only on flag States. For example, OECD members could seek to develop incentives/disincentives for OECD shipowners to register their ships in quality flag States. Others suggested that another possibility might be to make charterers and classification societies liable for damage caused by sub-standard ships.

8. Some in the group expressed discomfort with those approaches, stating that proposing such novel approaches would go beyond their mandate to the Group. Many also believed that such responses might be premature without a thorough re-examination of the problem. The Group decided to put off identifying specific solutions until after a first, information-gathering and summarizing phase was completed.

Next steps

9. Participants agreed to provide the Division for Ocean Affairs and the Law of the Sea with a paper summarizing studies carried out in their agencies on the question of flag State implementation going back not more than 10 years, plus a brief outline of current measures being taken to address the issues. If they so desired, participants could add a short statement regarding possible solutions, remedies and strategies for resolving the problems. The summaries would be sent by the end of August 2003, to be compiled into a compendium by the Division.

10. The compendium would then be circulated and participants would, principally through e-mail exchanges, develop a set of ideas on possible remedies/strategies to address the problem of poor flag State implementation. This should be roughly completed by September/October 2003 and should serve as the basis for the final report to be submitted by the Group to the Secretary-General of the United Nations by May-July 2004.

Annex III

Letter dated 9 September 2003 from the Secretary-General of the International Maritime Organization addressed to the Secretary-General of the United Nations

I refer to the meeting of the Inter-Agency Consultative Group on Flag State Implementation, held in Paris (Paris meeting) on 7 May 2003, as well as to the fourth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, held at United Nations Headquarters in New York from 2 to 6 June 2003.

The IMO Council strongly endorsed the reaffirmation at the Paris meeting of the mandate of IMO with regard to the organization's ongoing work in the field of strengthening flag and port State jurisdiction in all matters concerning the safety and security of shipping and the prevention of marine pollution and requested that I communicate to you its views on the subject.

The Council also recalled that, in line with the policies adopted by the IMO governing bodies, all matters regarding the safety of shipping and marine pollution are currently being addressed by IMO member States through the technical organs of the organization. This policy and its implementation are supported and assisted by the participation of the many intergovernmental and non-governmental organizations in consultative status. The Council further noted the continuous, ongoing work of IMO with other United Nations agencies where issues of common interest were already being addressed.

The recent *Prestige* oil spill in European waters has rekindled political interest in the transport of oil and has led to a number of substantive safety and environmental initiatives by IMO member States for reducing both the risks of accidents and their environmental impact on the oceans, on local communities, on tourism and on fishing industries. The safety record of the oil transport industry in terms of sea-borne trade has improved significantly in the past decade as a result of the instruments and treaties which have been adopted by the organization and the recognition by the major players in the industry of their responsibilities.

But the impact of a single major oil spill can have devastating effects. The organization's membership has therefore taken a very strong position in further reducing the risks and in promoting clear accountability of flag States. Its work programme for achieving these objectives is ambitious.

Bearing in mind this background and the well-established mandates of IMO and other participating agencies, the Council strongly reaffirmed the position expressed by IMO at the Paris meeting that policy issues concerning the role, responsibilities and actions of member States which derive from their obligations as IMO member States and from their adherence to IMO Conventions and regulations are not subjects which need additional coordination at inter-agency meetings.

We have been informed by the United Nations Division for Ocean Affairs and the Law of the Sea that the reference in Part A, section G, paragraph 24, of the report of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (A/58/95) regarding the establishment of the inter-agency Consultative Group on Flag State Implementation is simply a reference to the fact that the Group held a meeting in Paris, and is not intended to convey a recommendation to the General Assembly that it endorse the Group's continued existence.

Consistent with the views expressed by IMO at the Paris meeting, by the IMO Council, and in line with the decision taken by the United Nations System Chief Executives Board for Coordination that coordination arrangements in all areas of inter-agency concern should no longer rely on standing subsidiary bodies but should instead take place on a needs-based ad hoc basis, IMO does not see the need for any further meetings of the inter-agency Consultative Group. I should be grateful if this information would be conveyed to the General Assembly when it takes up the report of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea.

I am attaching, as requested by the Paris meeting, a paper summarizing the studies and work carried out by IMO over the past 10 years with respect to flag State implementation. I understand that this will be included, along with similar inventories supplied to the Division for Ocean Affairs and the Law of the Sea by the other participating agencies, in a report on the deliberations of the Group, to be considered next year at the fifth session of the Open-ended Informal Consultative Group.

(*Signed*) W. A. **O'Neil**
Secretary-General